REVENUE STABILIZATION AND TAX POLICY COMMITTEE

2007

Prepared by the Legislative Council Service
Staff
Pamela Ray, Staff Attorney
Cleo Griffith, Drafter
Tim Crawford, Records Officer

REVENUE STABILIZATION AND
TAX POLICY COMMITTEEfor
2006

TABLE OF CONTENTS

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 1

Annual Summary

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
2006 INTERIM
SUMMARY

Members of the Revenue Stabilization and Tax Policy Committee (RSTPC) during the 2006 interim were:

Members	Designees
Rep. Donald L. Whitaker, Chair	Sen. Sue Wilson Beffort
Sen. John Arthur Smith, Vice Chair	Rep. Donald E. Bratton
Sen. Ben D. Altamirano	Sen. Phil A. Griego.
Rep. Janice E. Arnold-Jones	Sen. John T.L. Grubesic
Sen. Mark Boitano	Rep. Irvin Harrison
Sen. Carlos R. Cisneros	Rep. Manuel G. Herrera
Sen. Kent L. Cravens	Sen. Stuart Ingle
Rep. Anna M. Crook	Sen. Cisco McSorley
Sen. Joseph A. Fidel	Sen. Steven P. Neville
Rep. Keith J. Gardner	Rep. Andy Nunez
Rep. Roberto "Bobby" J. Gonzales	Sen. Leonard Lee Rawson
Rep. George J. Hanosh	Rep. Bill Rehm
Rep. Ben Lujan	Rep. Debbie A. Rodella
Sen. William E. Sharer	Sen. Nancy Rodriguez
Rep. Daniel P. Silva	Sen. John C. Ryan
Sen. H. Diane Snyder	Rep. Henry Kiki Saavedra
Sen. James G. Taylor	Sen. Bernadette M. Sanchez
Rep. Thomas C. Taylor	Rep. Joe M Stell
	Rep. Don L. Tripp
	Rep. Luciano "Lucky" Varela

The RSTPC held six meetings in the 2006 interim. Three of those meetings were held at the State Capitol, while the others were held in Deming, Ruidoso and Eunice. At each meeting, the committee reviewed statutory changes proposed by the Taxation and Revenue Department (TRD). In addition, the committee heard extensive testimony from the State Racing Commission regarding its proposed legislation to update the state racing statutes and to coordinate with the Gaming Control Board for completion of personnel and licensee background investigations. The committee heard a discussion in Deming on the issue of use by the TRD of economic and functional obsolescence in valuation of electric utility property and oil and gas property in determining property taxes owed. The committee also discussed combined reporting of corporate income taxes. The committee continued to review activities of the TRD and the Economic Development Department regarding assessing the impact of economic development tax credits, deductions or other incentives on the tax revenue of the state. Other proposals presented to the committee would permit additional taxing authority for funding local governments. Twenty-two proposals were endorsed by the committee during the 2006 interim.

A chart containing information on the draft legislation proposed, committee endorsements and the names of committee member sponsors of the endorsed draft legislation is included at the end of this report.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 2

Work Plan, Schedule and Budget

2006 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

Members

Rep. Donald L. Whitaker, Chair
Sen. John Arthur Smith, Vice Chair
Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Rep. Anna M. Crook
Sen. Joseph A. Fidel
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Rep. Ben Lujan
Sen. William E. Sharer
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Sen. James G. Taylor
Rep. Thomas C. Taylor

Designees

Sen. Sue Wilson Beffort
Rep. William "Ed" Boykin
Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Irvin Harrison
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Leonard Lee Rawson
Rep. Bill Rehm
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. Bernadette M. Sanchez
Rep. Joe M Stell
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela

WORK PLAN

The Revenue Stabilization and Tax Policy Committee (RSTPC) is a statutorily created joint interim legislative committee. Pursuant to Section 2-16-3 NMSA 1978, the committee is directed to "examine the statutes, constitutional provisions, regulations and court decisions governing revenue stabilization and tax policy in New Mexico and recommend legislation or changes if any are found to be necessary . . . ".

Work Focus for 2006

The committee will:

1. review the adequacy of state revenues, including the adequacy of the tax base in years without windfalls or surpluses and the state's ability to generate revenue from the current tax system; identify the most important tax issues for businesses and establish a timetable to address them; and discuss the most beneficial way to address windfall revenues;

2. review the effectiveness of the current tax structure, including working with the Taxation and Revenue Department to establish a tax expenditure report to identify the impact of various tax changes;

3. examine the fairness and equity of the tax structure, including an examination of the balance of revenue collections from property taxes, personal income taxes, corporate income taxes and gross receipts taxes; determine the relative burden on residents and state and local governments from property taxes, personal income taxes, corporate income taxes and gross receipts taxes; and examine the adequacy of local taxes and distribution of taxes between the state and local governments; and

4. monitor the price of oil and gas, the price of gasoline and the stability of revenue from the gasoline tax and the adequacy of collections in providing for the costs of road construction and maintenance.

APPROVED MEETING SCHEDULE AND BUDGET

The dates on which the RSTPC will meet are:

Date	Location	Members
June 21	Santa Fe, Capitol, Room 322	$6,137.03
July 27-28	Deming	11,801.83
August 24-25	Ruidoso	10,113.87
September 11-13	Eunice	15,696.61
October 2-3	Santa Fe, Capitol, Room 322	8,526.87
December 4-5	Santa Fe, Capitol, Room 322	8,526.87
	Total	$60,803.08

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 3

June 2006
Agenda
Minutes

TENTATIVE AGENDA
for the
FIRST MEETING IN 2006
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

June 21, 2006
State Capitol, Room 322

Wednesday, June 21

9:30 a.m.	**Call to Order** —Representative Donald L. Whitaker, Chair
9:35 a.m.	**Review of Tax Legislation from the 2006 Session** —Jan Goodwin, Secretary, Taxation and Revenue Department
10:55 a.m.	**Road Fund Status and Highway Construction and Maintenance Costs** —Rhonda Faught, Secretary, Department of Transportation
12:00 noon	**Lunch**
1:15 p.m.	**Post-Session Fiscal Summary** —David Abbey, Director, Legislative Finance Committee
2:15 p.m.	**Adoption of Committee Work Plan and Meeting Schedule** —Pam Ray, Staff Attorney, Legislative Council Service (LCS) —Cleo Griffith, Drafter, LCS
2:45 p.m.	**Adjourn**

MINUTES
for the
FIRST MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

June 21, 2006
State Capitol, Room 322
Santa Fe, NM

The first meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Donald L. Whitaker, chair, on June 21, 2006 at 9:55 a.m. in Room 322 at the State Capitol, Santa Fe.

Present
Rep. Donald L. Whitaker, Chair
Sen. John Arthur Smith, Vice Chair
Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh
Rep. Ben Lujan
Sen. William E. Sharer
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Rep. Anna M. Crook
Sen. Joseph A. Fidel
Rep. Daniel P. Silva
Sen. H. Diane Snyder

Designees
Sen. Sue Wilson Beffort
Rep. Irvin Harrison
Rep. Don L. Tripp

Rep. William "Ed" Boykin
Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Manual G. Herrera
Sen. Stuart Ingle
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Leonard Lee Rawson
Rep. Bill Rehm
Rep. Debbie A. Rodella
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Sen. Bernadette M. Sanchez
Rep. Joe M Stell

Additional Participants

Rep. Luciano "Lucky" Varela

Staff
Tim Crawford, Legislative Council Service (LCS)
Cleo Griffith, LCS
Pam Ray, LCS
Stephanie Schardin, Legislative Finance Committee (LFC)
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday, June 21

Review of Tax Legislation from the 2006 Session

Jan Goodwin, secretary, Taxation and Revenue Department (TRD), made a presentation concerning tax legislation that passed during the 2006 session. She distributed a list of legislation that did not pass and the omnibus 2006 tax legislation (HB 82).

Legislation that passed and has been enacted into law includes:

- tax increment financing;
- gross receipts tax (GRT) on licenses for intangibles;
- film production tax credits;
- GRT deductions for hospital construction (Ms. Goodwin noted that this GRT deduction could have broader impact on tax collections than intended. Senator Smith suggested that a sunset might be appropriate for HB 8 since the deduction was intended for only one project. Ms. Goodwin agreed that a sunset might be appropriate.);
- GRT deductions for counselors and therapists;
- elimination of the daily bed surcharge;
- regional spaceport development GRT;
- TRD contract for collections;
- cigarette stamp procedures (Ms. Goodwin noted that the law is vague concerning the definition of small cigars and that clarifying legislation may be necessary.);
- solar energy tax credits;
- weight-distance permit fees;
- Bernalillo County local GRT option for indigent health care; and
- public inspection of tax credits over $10,000.

Topics proposed by TRD in legislation that did not pass include:

- technical corrections to Section 7-1-4 NMSA 1978 (HB 828); and

- confidentiality of tax returns and other information (HB 387 & SB 537).

Regarding confidentiality of tax returns, Senator Beffort asked for a clarification of existing exceptions to the confidentiality rules. Ms. Goodwin responded that there are currently as many as 30 exceptions to the confidentiality laws found in Section 7-1-8 NMSA 1978. In all cases, information that is released must still be treated confidentially by the recipient. The proposed legislation would have provided that law enforcement agencies could obtain confidential information. This would obviate the need for a subpoena. Such information must still be treated confidentially by the law enforcement agency.

The following legislation continues the list of topics that did not become law:

- mandatory e-filing of personal income tax returns (HB 382 & SB 320);
- tax threshold for mandating a special payment method (HB 382 & SB 320);
- withholding tax due date (HB 382 & SB 320);
- automatic federal extensions (HB 384 & SB 319);
- change managed audit provisions (HB 384 & SB 319);
- double local option penalty elimination for managed audit taxpayers for food or medical reporting errors (HB 384 & SB 319);
- eliminate double local option penalty for inaccurate reporting of food or medical GRT deduction (not managed audit taxpayers) (HB 380 & SB 323);
- decrease of interest rates on deficiencies and overpayments (HB 390 & SB 318);
- increase of penalties for failure to pay tax or file return (HB 390 & SB 318);
- documentation to support the deduction pursuant to Section 7-9-47 NMSA 1978 (HB 380 & SB 323);
- licensing referrals to the Regulation and Licensing Department for noncompliance (HB 389 & SB 322);
- criminal penalty for obstructing tax investigations (HB 827 & SB 707); and
- commercial driver's license amendments (HB 317).

The committee agreed that changing the managed audit provisions from 30 days to three months would be more agreeable than the TRD recommendation to change to six months. Secretary Goodwin responded that such a change would be an improvement; however, the gain in revenue collections would likely not be as great as the six months recommended by TRD.

Road Fund Status and Highway Construction and Maintenance Costs

Rhonda Faught, secretary, Department of Transportation (DOT), made a presentation concerning highway construction costs.

- Federal highway funds will remain level, which represents approximately $50 million less than anticipated.
- State revenue collections are good and are expected to exceed the forecast by approximately $2 million to $10 million this fiscal year.
- Forty-four states, the District of Columbia, Alberta and Ontario responded to an American Association of State Highway Transportation Officials (AASHTO) survey.
  - Thirty-five entities reported that they are experiencing fewer competitive bids for

highway projects compared to three years ago.

- Forty-one entities reported that they are experiencing significant cost increases
- New Mexico has experienced a 12 percent increase in cost compared to 70 percent for Utah, 68 percent for Texas and 52 percent for Colorado.
- New Mexico cost containment has been achieved through design optimization, value engineering, economy of scale contracting, alternative bid procedures, etc.

Speaker Lujan asked about the impact of inflation on the buying power of the gasoline excise tax during the past 10 years. Secretary Faught responded that the 17-cent tax currently buys what 13 cents would have purchased in 1995.

The DOT road fund receives 12 cents of the 17-cent gasoline tax. The average gasoline tax across the country is 22 cents per gallon.

Senator Smith expressed concern about the ability to service the debt on transportation bonds, reduced federal funding and the impact of inflation on the state gasoline tax. He indicated that the legislature and the executive branch will eventually have to address a stable revenue source for financing highway construction.

Post-Session Fiscal Summary

David Abbey, director, LFC, made a presentation concerning the status of revenues and appropriations following the 2006 session.

- Fiscal year 2006 revenue collections are exceeding the forecast by approximately $100 million.
- Major contributors to the strong collections are the GRT and personal income tax.
- The GRT has been bolstered by the construction sector.
- Personal income tax withholding is strong, which signals broad-based economic health.
- The fiscal year 2007 budget represents an 8.3 percent increase over 2006.
- Total capital outlay appropriations were $852 million.
- Reserves are expected to be 10.5 percent of recurring appropriations at the end of fiscal year 2007.
- Based on the 2006 consensus forecast, it was anticipated that there would be $168 million of new money to spend in fiscal year 2008.
- It is possible that the fiscal year 2008 new money may be increased by $150 million for a total of $318 million.
- The governor vetoed $161 million of general fund appropriations.

Senator Smith observed that the governor's vetoes, designed to maintain the reserve, were not necessary in view of the excess revenue collections.

Representative Varela expressed concern over the impact of inflation on state government operating budgets and the federal government shifting financial responsibility for program funding to the states.

Adoption of Committee Work Plan and Meeting Schedule

Ms. Ray and Ms. Griffith presented the proposed work plan. Ms. Ray explained that the Legislative Council prescribed certain subject areas for the committee to examine.

Senator Smith suggested that the committee finalize its legislative recommendations by the September meeting so that fiscal impact reports (FIR) might be prepared. Senator Smith does not want to repeat the 2005 procedure wherein the committee approved legislative initiatives in concept without knowledge of the fiscal impact.

Ms. Griffith recommended that the committee take action on actual bill drafts rather than approving initiatives in concept.

Ms. Ray suggested that the committee reserve the October meeting for review of draft legislation.

Speaker Lujan expressed concern that, if the committee declines to approve legislation in the absence of an FIR, then TRD is in the position of "killing" an initiative simply by failing to produce an FIR.

Senator Taylor recommended that the scheduled November 2-3 meeting be changed to later in the month at the discretion of the Legislative Council.

Senator Smith suggested that a review of New Mexico's gaming laws and the structure of the State Racing Commission and Gaming Control Board be added to the work plan.

Senator Smith would like the committee to review the revenue sources available to New Mexico state government. The objective is to achieve sustainable, broad-based sources and avoid catastrophic budget cuts.

The committee adopted the amended work plan and meeting schedule.

Other Business

There was no other business brought before the committee.

Adjournment

The committee adjourned at 2:45 p.m.

- 6 -

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 4

July 2006
Agenda
Minutes

Revised: July 25, 2006

<u>TENTATIVE AGENDA</u>
for the
SECOND MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

July 27-28, 2006
Deming Public Schools Administration Board Room
400 Cody Road
Deming, New Mexico

<u>Thursday, July 27</u>

9:00 a.m. **Call to Order**
—Representative Donald L. Whitaker, Chair

9:05 a.m. **Welcome**
—Mayor Andres Silva, City of Deming

9:35 a.m. **Luna Energy Facility Property Tax and Gross Receipts Tax Issues**
—Scott Vinson, Luna County Manager
—Mayor Andres Silva, City of Deming
—Steve Duran, Finance Director, City of Deming

10:55 a.m. **In the Matter of the Protest of Wal-Mart Stores, Inc.**
—Dr. Tom Clifford, Chief Economist, Taxation and Revenue Department (TRD)

11:25 a.m. **Corporate Income Tax Combined Reporting**
—Bill Jordan, Deputy Director for Policy, New Mexico Voices for Children
—Gerry Bradley, Research Director, New Mexico Voices for Children

12:15 p.m. **Lunch**

1:45 p.m. **Relative Reliance of New Mexico on Gross Receipts, Income and Property Taxes**
—Dr. Tom Clifford, Chief Economist, TRD

2:15 p.m. **State Revenue Sources—Comparison with Surrounding States**
—Jim Eads, Executive Director, New Mexico Tax Research Institute

2:55 p.m. **Oil and Gas Revenue and Price Update—Gasoline Price Update**
—Dr. Tom Clifford, Chief Economist, TRD

3:30 p.m. **Public Shooting Range Dedicated Tax Proposal**

—Howard Staub, Deming

4:00 p.m. **Public Comment**

4:15 p.m. **Recess**

<u>Friday, July 28</u>

9:00 a.m. **Taxation and Revenue Department Bills**
—Dr. Tom Clifford, Chief Economist, TRD

10:15 a.m. **Real ID Implementation, Costs and Challenges**
—Kenneth Ortiz, Director, Motor Vehicle Division, TRD
—John Salazar, Acting Chief Information Officer, TRD

11:15 a.m. **Real ID Issues**
—Jay Stanley, Public Education Director, Technology and Liberty Project, American Civil Liberties Union

12:00 noon **Adjourn**

MINUTES
of the
SECOND MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

July 27-28, 2006
Deming Public School Administration Boardg10
Room
400 Cody Road
Deming, NM

The second meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Donald L. Whitaker, chair, at 9:10 a.m. at the Public School Administration Board Room, Deming.

Present	**Absent**
Rep. Donald L. Whitaker, Chair	Sen. Ben D. Altamirano
Sen. John Arthur Smith, Vice Chair	Sen. Mark Boitano
Rep. Janice E. Arnold-Jones	Sen. Kent L. Cravens
Sen. Carlos R. Cisneros	Sen. Joseph A. Fidel
Rep. Anna M. Crook	Rep. George J. Hanosh
Rep. Keith J. Gardner	Sen. William E. Sharer
Rep. Roberto "Bobby" J. Gonzales	Rep. Daniel P. Silva
Rep. Ben Lujan	Sen. James G. Taylor
Sen. H. Diane Snyder	
Rep. Thomas C. Taylor	
Designees	
Rep. Manual G. Herrera	Sen. Sue Wilson Beffort
Sen. Leonard Lee Rawson	Rep. Donald E. Bratton
Sen. Nancy Rodriguez	Sen. Phil A. Griego
Sen. John C. Ryan	Sen. John T.L. Grubesic
Rep. Joe M Stell	Rep. Irvin Harrison
	Sen. Stuart Ingle
	Sen. Cisco McSorley
	Sen. Steven P. Neville
	Rep. Andy Nunez
	Rep. Bill Rehm
	Rep. Debbie A. Rodella
	Rep. Henry Kiki Saavedra
	Sen. Bernadette M. Sanchez
	Rep. Don L. Tripp
	Rep. Luciano "Lucky" Varela

Visiting Legislators
Sen. Dianna J. Duran
Rep. Dona G. Irwin

Staff
Tim Crawford, Legislative Council Service (LCS)
Norton Francis, Legislative Finance Committee (LFC)
Cleo Griffith, LCS
Pam Ray, LCS
Doug Williams, LCS

Guests
The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, July 27

Welcome
—Mayor Andres Silva, Deming

The mayor welcomed the committee to Deming. He noted that the City of Deming is growing and its infrastructure is developing. He said that approximately 450 national guard troops will be stationed in Deming in the near future along with an increase in the United States Border Patrol. A new high school is being planned and developers are planning seven new housing subdivisions. Solar Ventures is planning to locate in Deming and will be employing between 300 and 400 people. Deming also is working to improve retention of police and firefighters.

Speaker of the House Lujan asked about the Deming gross receipts tax (GRT) rate. The mayor responded that the rate in Deming is seven percent.

Senator Ryan asked what Solar Ventures does. The mayor said that Solar Ventures is planning the largest electric generating plant in the world based on solar technology.

Luna Energy Facility Property Tax and Gross Receipts Tax Issues
—Scott Vinson, Luna County Manager
—Rick Holdridge, Chair, Luna County Board of County Commissioners
—Steve Duran, Finance Director, City of Deming

Duke Energy originally planned and began development of the natural gas-fired electric generation plant located a few miles north of Deming. The plant was originally valued at $375 million but it was placed in mothballs when the cost of natural gas soared and the California market for power decreased. Eventually, the Public Service Company of New Mexico (PNM), Phelps Dodge and Tucson Electric (the PNM group) purchased the plant for $40 million.

The issue with the power plant is that it was independently appraised at $300 million. However, it has been valued for property tax purposes at a "distressed" value of $140 million because it was considered "construction in progress". Luna County would like to have the tax value closer to the appraised value. The PNM group is protesting $100 million of the assessed value and paying property tax only on the $40 million purchase price. Ultimately, the PNM group will have to pay property tax on the full value of the property. The facility is already operating at close to 50 percent of anticipated capacity.

Luna County issued industrial revenue bonds (IRBs) to aid Duke Energy in the development of the power plant. After reviewing a report developed by Dr. Brian McDonald, an economist, based on data provided by the PNM group, Luna County chose to retire the bonds voluntarily to facilitate the sale between Duke Energy and the PNM group. Had the county not done so, the City of Deming would have acquired ownership of the plant and could have sold it, and received $40 million.

Speaker Lujan asked about the status of the plant at the present time. Mr. Vinson responded that the plant is up and running. John Gillis, representing PNM, stated that the purpose of the plant is wholesale energy sales to other states. The capacity of the plant is 560 megawatts. The plant employs 23 Deming residents and the average salary is $71,000. The PNM group purchases natural gas from the Waha hub in Texas and pays the state five percent compensating tax. The City of Deming does not receive any GRT from the purchase of the natural gas because the point of purchase of the natural gas is out of state, not at the plant gate. As a consequence, Deming is losing $1.5 million per year and Luna County is losing $800,000 ($1.8 million total, including the property tax) that was originally anticipated had the natural gas been subject to the GRT. The City of Deming is supporting the creation of a local option compensating tax.

Senator Smith noted that the blue ribbon commission recommended that the GRT rate and compensating tax rate be the same. The current difference in rates promotes the purchase of out-of-state products.

Other lines of questioning from the committee were to clarify why the IRBs had been retired and whether the city or the county had commissioned a separate review of the economic and tax potential of the plant. There was no separate analysis conducted because the city and the county knew the work of Dr. McDonald and were willing to rely on his analysis. Had the PNM group been able to provide Dr. McDonald with what they now consider to be correct data, the report would have indicated other results that the city and county would have relied on to evaluate the alternative actions available to them. Mr. Vinson stated that, at the time and based on the information that was available to it, the city did not want to take possession of the plant. The city and the county wanted to see the plant functioning not in mothballs.

Another committee inquiry questioned when the Taxation and Revenue Department (TRD) established the $300 million appraisal value. TRD responded that the evaluation was established as of January 1, 2006. The PNM group believes the valuation should be based on purchase price plus the dollar value of completing the plant ($140 million total), not the original $375 million valuation of the plant.

In the Matter of the Protest of Wal-Mart Stores, Inc.
—Dr. Tom Clifford, Chief Economist, TRD

New Mexico, like most states, uses federal taxable income as the starting point for determining New Mexico base income. That income is then apportioned among the states using a formulary apportionment system called UDITPA (Section 7-4-10 NMSA 1978). The formula assumes that income is generated by a corporation's property, payroll and sales in each state. The average of the combined percentages of those factors in New Mexico (the New Mexico percentage) is then applied against New Mexico base income.

Wal-Mart created a Delaware holding company in 1991 (WMR) and transferred its trade name to that entity. The holding company then charged the company operating in New Mexico and other states a two percent gross sales royalty for the right to use the Wal-Mart name. The holding company then loaned the income back to the parent company. This arrangement allowed Wal-Mart Stores to significantly reduce its New Mexico tax liability because it was able to report deductions for both royalty payments to the holding company and interest payments on the loans from the holding company.

New Mexico has asserted the right to tax WMR and similar holding companies even though they lacked a physical presence outside of Delaware or Nevada. The state's right to do so from a constitutional perspective was upheld in the *Kmart* decision of 2006. (*Kmart Corporation v. Taxation and Revenue Department*, 2006-NMSC-006.) Most other state courts have reached similar conclusions.

Wal-Mart conceded that the state had a right to tax the income of its holding company under the United States Constitution, but asserted that the state's formulary apportionment system would not assign any income from the holding company to New Mexico. Without question, UDITPA was never intended to tax specialty subsidiaries like WMR. It is a system designed to tax an integrated mercantile or manufacturing business on a combined or consolidated basis. It is not a system well-suited to tax an entity that has little or no property, payroll or sales, yet makes billions of dollars from licensing intangibles to a related entity.

On May 1, 2006, the hearing officer for the New Mexico TRD issued a 40-page decision and order upholding the assessment of $6.8 million in corporate income taxes against Wal-Mart Stores, Inc. With interest, the current liability amount is approximately $11.4 million. Wal-Mart has appealed the decision to the New Mexico Court of Appeals.

Mandatory combined reporting is one answer to the problems of domestic transfer pricing and entity isolation. Under combined reporting, all commonly owned and controlled corporations with intercompany transactions are required to file a single return, eliminating intercompany charges. New Mexico's apportionment percentage would be smaller, because more entities are included, but the percentage would be applied to a larger base.

Dr. Clifford stated that, for tax year 2003, corporate income tax filers were divided into three categories:

- 46 percent were separate entity filers;
- 10 percent were combined entity filers; and

- 44 percent were federal consolidated filers.

Representative Arnold-Jones stated that legislators need more information concerning corporate tax filers in order to make an intelligent decision before mandating combined filing.

Dr. Clifford said that TRD has both resource and systems issues with respect to corporate tax filers.

Speaker Lujan asked what TRD is doing with respect to HR 1956. Dr. Clifford stated that the Governor's Office is working with New Mexico's delegation to defeat the bill.

Corporate Income Tax Combined Reporting
—Bill Jordan, Deputy Director for Policy, New Mexico Voices for Children
—Gerry Bradley, Research Director, New Mexico Voices for Children

Combined reporting is one of two basic approaches to state corporate income tax "apportionment". Apportionment is the calculation by which the profit of a multistate corporation is divided for income tax purposes among the states in which it is doing business producing goods/services and/or making sales.

Apportionment is done by simple algebraic formulas. Formulas generally assign a share of the nationwide profit of a corporation to a particular state in proportion to the shares of its nationwide property, payroll and sales located in that state. New Mexico's formula gives equal (one-third) weight to sales, property and payroll.

There are two approaches to apportionment: combined reporting vs. separate entity:

- "separate entity" applies the formula to the profit of each separate corporation as calculated by the business itself (subject to ad hoc adjustment on audit); and
- "combined reporting" combines (adds together) the profits of parents and subsidiaries before applying the formula.

The goals of combined reporting are to:

- stop corporate income tax avoidance based on artificially shifting income to commonly owned corporations in low-tax or no-tax states that are beyond the income tax reach of New Mexico; and
- ensure that a corporation's income tax liability to New Mexico is the same regardless of the corporation's legal structure.

Some of the tax-avoidance strategies nullified by combined reporting are:

- passive investment companies;
- transfer pricing;
- intangible asset spin-offs; and
- isolating profitable activities from the nexus.

Combined reporting nullifies these tax avoidance strategies by:

- treating the commonly owned in-state and out-of-state corporations as one corporation for apportionment purposes (adds profits together); and
- nullifying any tax benefits from shifting income to (or isolating income in) the out-of-state corporation.

House Bill 123 from the 2006 session would have mandated unity corporate filing.

Representative Arnold-Jones asked if there is anything beyond combined reporting in the future of corporate taxes. Mr. Jordan indicated that combined reporting is the next step for the states and he cannot envision a different system at this time.

Senator Snyder asked why Voices for Children is interested in maintaining the integrity of the revenue system. Mr. Jordan responded that Voices for Children believes it is important for state government to have sufficient revenue to support essential programs. Senator Snyder said that she believes Voices for Children will be seeking additional funding if combined reporting results in additional revenue.

Relative Reliance of New Mexico on Gross Receipts, Income and Property Taxes
—Dr. Tom Clifford, Chief Economist, TRD

Dr. Clifford reviewed the history of gross receipts, personal income and property tax collections and how they relate to total tax collections. The results are summarized in the following Table 1.

Table 1
History of Major Tax Revenues

	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
"Big Three" tax:										
Gross receipts tax	$1,565	$1,623	$1,729	$1,790	$1,850	$2,010	$2,062	$2,167	$2,316	$2,538
Personal income tax	665	771	800	808	881	911	1,032	942	1,031	1,106
Property tax	511	546	578	634	676	743	735	817	840	910
Subtotal "Big Three"	2,741	2,940	3,107	3,232	3,407	3,664	3,829	3,926	4,187	4,554
Total All Taxes	$3,733	$4,065	$4,262	$4,283	$4,616	$5,295	$5,123	$5,277	$5,762	$6,528
Tax as share of all taxes:										
Gross receipts tax	41.9%	39.9%	40.6%	41.8%	40.1%	38.0%	40.2%	41.1%	40.2%	38.9%
Personal income tax	17.8%	19.0%	18.8%	18.9%	19.1%	17.2%	20.1%	17.9%	17.9%	16.9%
Property tax	13.7%	13.4%	13.6%	14.8%	14.6%	14.0%	14.3%	15.5%	14.6%	13.9%
Subtotal "Big Three"	73.4%	72.3%	72.9%	75.5%	73.8%	69.2%	74.7%	74.4%	72.7%	69.8%
Tax as share of "Big Three":										
Gross receipts tax	57.1%	55.2%	55.6%	55.4%	54.3%	54.9%	53.9%	55.2%	55.3%	55.7%
Personal income tax	24.3%	26.2%	25.7%	25.0%	25.9%	24.9%	27.0%	24.0%	24.6%	24.3%
Property Tax	18.6%	18.6%	18.6%	19.6%	19.8%	20.3%	19.2%	20.8%	20.1%	20.0%

Senator Rawson asked which tax should be reduced. Dr. Clifford suggested examining the mix of tax revenue as a share of personal income and comparing the results to other states.

The state retains about 60 percent of total GRT collections; 40 percent is county and local revenue.

Senator Rawson observed that the underground economy pays the GRT even though it does not pay the income tax.

Speaker Lujan noted that business decisions are not made exclusively on the basis of taxes.

State Revenue Sources — Comparison with Surrounding States
—Jim Eads, Executive Director, New Mexico Tax Research Institute

There are different methods to calculate the tax burden of a resident of a state. Table 2 presents the results of two of those methods. The first method is to calculate taxes paid as a percentage of $1,000 of personal income. Thus, as is shown in Table 2, the average person in the United States pays $34.80 in property taxes for each $1,000 of income. In New Mexico, the average resident pays $18.00 in property taxes per $1,000 of income, which puts New Mexico in forty-sixth position in a ranking of all the states.

Using the same method, a resident of New Mexico pays $47.80 per year in GRT, per $1,000 earned, which ranks seventh in the nation. Thus, the GRT paid per $1,000 of income in New Mexico is 179 percent of the United States average.

The second method is to calculate the per capita tax burden, dividing taxes collected by population. In the United States, the average homeowner has to pay $1,086 in property taxes per year; while in New Mexico the average homeowner pays $441, which puts New Mexico in forty-eighth position in the nation. Using the same method, GRT collection is $2,861 per capita, per year, which ranks New Mexico tenth in the nation on a per capita basis.

Personal income taxes in New Mexico are $21.50 per $1,000 earned and $529 per year on a per capita basis. New Mexico ranks thirty-fourth using the first method and thirty-sixth using the second method. Both of these are lower than the national average.

Table 2
Tax Burdens: How New Mexico Compares to the United States Average

State and local revenues	METHOD 1: Per $1,000 of Personal Income US	NM	Rank	% of US	METHOD 2: Per Capita US	NM	Rank	% of US
Selected tax revenues								
Property	$34.8	$18.0	46	52%	$1,086.0	$441.0	48	41%
Individual income	$23.5	$21.5	34	92%	$734.0	$529.0	36	72%
General sales	$26.7	$41.8	7	156%	$836.0	$1,028.0	10	123%
Total state and local taxes	$110.3	$116.0		105%	$3,447.0	$2,861.0		83%

The heaviest burden of the New Mexico tax system is channeled through the GRT system, in part because the GRT system has a broad base that includes services and because business services are taxed, including some pyramiding. In both standards of measurement, the burden of New Mexico's GRT ranks among the 10 highest in the nation.

The relatively high burden of the GRT is ameliorated by the property tax system, whose burdens are very low when compared to the rest of the nation. Although not as low as the property tax, the individual income tax burden is also low when compared nationally.

The total state and local tax burden in New Mexico is about average when the first methodology is used, 96 percent of the average state and local tax burden in the United States. Based on the per capita calculation, the burden is even lower, ranking at 83 percent of the United States average.

Speaker Lujan asked if it is true that the tax burden is heaviest on the poor. Mr. Eads explained that the GRT is inherently regressive and results in low-income families spending a greater share of their income in consumption taxes than upper-income families.

Oil and Gas Revenue and Price Update — Gasoline Price Update
—Dr. Tom Clifford, Chief Economist, TRD

Dr. Clifford reported on the conditions in the oil and gas markets. With respect to oil, he observed that:

- oil prices are currently at their highest level ever in nominal dollars; inflation-adjusted oil prices exceeded $90.00 a barrel in 1981 dollars;
- there is a lack of supply growth:
  - shortages of rigs, materials and labor: costs are up 50 percent since 2003;
  - resource nationalism: Nigeria, Venezuela, Russia and Iran;
  - OPEC has little spare capacity; minor increase in 2006;
  - non-OPEC has poor track record;
  - hurricane losses have reduced production; and
  - improved supply outlook in 2007 depends on non-OPEC producers (including the United States and former Soviet Union);

- demand growth continues due to economic growth:
  - China, India and other lesser-developed countries make up 85 percent of growth; and
  - a major economic downturn is the one thing that could drive prices down; and
- each $1.00 change in the price of crude oil per barrel equals $4 million to the general fund.

With respect to natural gas, Dr. Clifford observed that:

- storage levels are at record highs — this will almost certainly persist through the 2006-2007 heating season — putting downward pressure on gas prices;
- production is increasing, especially in the Rockies, onshore Gulf of Mexico and Canada (record levels of exports to the United States);
- some increasing Rockies production will be pushed through the San Juan Basin, putting downward pressure on San Juan Basin and Permian Basin prices;
- demand is growing: high oil prices are causing some shift of demand to natural gas; manufacturing demand has grown but is limited by increased efficiency;
- off-shore Gulf of Mexico production will suffer permanent losses equivalent to 1.5 percent of total United States supply; and
- the liquified natural gas supply has been slow to grow due to competing demand in Europe and Asia.

Dr. Clifford summarized the revenue from oil and gas in Table 3:

Table 3
State and Local Revenues from Oil and Gas Production
Forecast Update: January 2006

Fiscal Year:	2002	2003	2004	2005	2006	2007	2008	2009	2010
					Forecast				
Average natural gas price	$2.67	$3.60	$4.68	$5.80	$7.50	$6.10	$5.80	$5.50	$5.50
Natural gas sales volume	1,616	1,570	1,534	1,565	1,527	1,504	1,489	1,474	1,459
Average oil price	$21.98	$27.80	$31.97	$42.95	$58.00	$55.00	$53.00	$50.00	$50.00
Oil sales volume	69.20	68.00	66.50	63.50	62.50	61.60	60.70	59.80	58.90
State general fund:					**Million dollars**				
O&G emergency school tax	$193	$229	$295	$382	$487	$408	$370	$351	$347
O&G conservation tax	$10	$12	$15	$19	$24	$20	$19	$18	$18
Natural gas processors tax	$22	$21	$15	$22	$28	$34	$35	$30	$28
Federal land royalties	$215	$270	$337	$423	$535	$444	$419	$394	$389
State land rents & bonus payments	$16	$21	$25	$31	$39	$34	$32	$30	$30
Subtotal — general fund	**$456**	**$555**	**$687**	**$877**	**$1,113**	**$940**	**$875**	**$823**	**$812**
Other state funds:									
O&G severance tax	$183	$221	$294	$374	$478	$401	$366	$347	$343
State land royalties	$198	$220	$279	$354	$452	$377	$356	$333	$329
Subtotal — state revenues	**$836**	**$995**	**$1,260**	**$1,605**	**$2,043**	**$1,718**	**$1,597**	**$1,502**	**$1,484**
Local revenues:									
O&G ad valorem production tax	$53	$64	$83	$105	$134	$113	$104	$98	$97
O&G production equipment Ad valorem tax	$14	$14	$12	$15	$18	$23	$24	$21	$20
Subtotal — local revenues	**$67**	**$78**	**$95**	**$120**	**$153**	**$136**	**$128**	**$119**	**$117**
Grand total state & local revenues	**$903**	**$1,073**	**$1,355**	**$1,725**	**$2,196**	**$1,854**	**$1,725**	**$1,622**	**$1,601**
Total of all state & local taxes	$474	$562	$713	$917	$1,169	$1,000	$918	$865	$853
Total rents, royalties & bonuses	$429	$511	$642	$808	$1,026	$854	$807	$757	$748

Finally, Dr. Clifford provided Table 4, which details the impact of oil and gas on the general fund.

Table 4
Oil and Gas Revenue Share of General Fund
Forecast Update: January 2006

Fiscal Year:	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
				Forecast			
			Million dollars				
Gross receipts tax	$27	$37	$55	$38	$36	$33	$33
Personal income tax	$63	$70	$74	$77	$80	$80	$78
Corporate income tax	$63	$126	$182	$162	$154	$147	$140
Production taxes	$325	$423	$539	$462	$424	$399	$393
Rents, royalties & bonuses	$362	$454	$574	$477	$451	$424	$419
Total	$840	$1,110	$1,424	$1,216	$1,144	$1,083	$1,063

Speaker Lujan asked about the productivity of oil and gas wells. Dr. Clifford responded that the cost of drilling has increased and the yield of wells has declined. Therefore, it is much more costly to produce oil and gas than in the past.

Representative Crook asked if the permitting process for new wells can be expedited. It was noted that the Oil and Gas Association is currently working with the Governor's Office on this issue.

Public Shooting Range Dedicated Tax Proposal
—Howard Staub, Deming

Mr. Staub proposed an excise tax on manufactured ammunition for the purpose of developing new public shooting ranges. Law enforcement and federal agencies would be exempt from the excise tax. Mr. Staub suggested that shooting ranges are a tourist attraction. There is currently a 10 percent federal excise tax on ammunition. He suggests a five percent or 10 percent state excise tax.

Senator Smith requested that staff explore the Tennessee ammunition tax.

Representative Crook asked how much revenue would be generated. Mr. Staub had no idea.

Senator Ryan asked how much is needed for building shooting ranges. Mr. Staub did not know but envisioned that new public ranges could be sited at nominal cost on public-owned land.

Representative Stell asked who would own the shooting range. Mr. Staub envisioned municipal ownership.

Representative Gonzales asked how much land is needed. Mr. Staub estimated that about 60 acres is sufficient.

Public Comment

Former State Representative G.X. McSherry emphasized the importance of water conservation, especially in agriculture. He suggested that the legislature support conservation initiatives through tax policy. Specifically, he would like a GRT deduction for drip-irrigation equipment.

Senator Smith noted that a drip system uses as much as 60 percent less water than conventional irrigation.

Senator Ryan observed that a GRT deduction by itself may not be a sufficient incentive to promote water conservation efforts.

Friday, July 28

Taxation and Revenue Department Bills
—Dr. Tom Clifford, Chief Economist, TRD

Dr. Clifford outlined the purpose of the technical corrections bill (202.163160.1). Dr. Clifford also reviewed a bill draft (202.163163.1) that amends the tax auditing provisions of New Mexico tax law. The first section would permit TRD to use statistical sampling techniques when conducting a tax audit.

Members of the committee had reservations about the statistical sampling section of the bill draft (202.163163.1) and Mr. Clifford said that TRD will review the language of the bill and return to the committee at a later date.

Mr. Clifford outlined other legislative initiatives that have not yet been drafted.

Representative Arnold-Jones noted that sometimes a taxpayer overpays and is advised that TRD cannot cash the check. Moreover, TRD advises the taxpayer that if a replacement check is not received as soon as possible, penalties and interest will apply.

Senator Rawson suggested that instead of assessing penalties, TRD should be creative and offer incentives to file a return. Dr. Clifford said that long experience teaches that, if there are no penalties, a return will not be filed.

Representative Arnold-Jones said she would like draft legislation to be sent to committee members in advance of the meeting.

Dr. Clifford plans to return to the committee in September with bill drafts and fiscal impact reports.

Speaker Lujan said that TRD should identify those bills that have passed both bodies in the past so that they may be fast-tracked in the committee endorsement process and possibly in the next session.

Real ID Implementation, Costs and Challenges
—Kenneth Ortiz, Director, Motor Vehicle Division, TRD
—John Salazar, Acting Chief Information Officer, TRD

The Real ID Act established minimum requirements for driver's licenses and identification cards (DL/ID) issuance standards. It also set forth requirements for capture, verification and retention of identity source documents, in addition to physical security of DL/ID production sites and security clearance for employees who produce DL/ID documents. The act also set minimum security DL/ID standards, including overt, covert and forensic security features and the ability to provide electronic access to its database, including data fields on the DL/ID and associated driving histories, to all other states.

Residents of states that do not issue Real ID compliant driver's licenses or identification cards will not be able to:

- use their driver's license to board an airplane;
- access federal buildings (national laboratories, district courts, etc.) or military bases; or
- present a driver's license in another state to prove identity.

Noncompliant DL/IDs must clearly indicate nonacceptability and must use a unique design or color to alert law enforcement and other officials who may use the documents that the credential is noncompliant. The following is a detailed listing of the proposed rules, including impact, cost and legislation for New Mexico to be compliant with Real ID. Real ID minimum document requirements includes:

- full legal name;
- date of birth;
- DL or ID number;
- digital photograph;
- principal residence address;
- signature;
- physical security features, including polycarbonate; and
- PDF 417 (2-D) barcode.

Total estimated cost for Real ID implementation

Nonrecurring	Recurring
$13,053,000	$6,044,000

Representative Stell observed that Real ID will require a large increase in staff.

Representative Arnold-Jones recommends a letter from the committee to the New Mexico congressional delegation concerning the availability of polycarbonate and its overseas production.

Speaker Lujan made a motion directing staff to draft a memorial recommending to Congress the repeal or modification of Real ID. The motion was adopted.

Real ID Issues
—Jay Stanley, Public Education Director, Technology and Liberty Project, American Civil Liberties Union (ACLU)

The ACLU believes that Real ID will result in identity theft and invasion of privacy. Three key things to remember are:

- problems with the Real ID Act are severe;
- New Mexico is not alone; and
- rules for implementing Real ID are in flux.

Alabama attempted to verify names contained in its motor vehicle records with social security numbers. The result was chaos. Also, there is no flexibility in Real ID with respect to masking the address of domestic abuse victims.

National Conference of State Legislatures estimates the nationwide cost of Real ID to be between $9 and 13 billion. The National Governor's Association, the ACLU, the State of New Hampshire and the State of Virginia have all announced opposition to Real ID.

The deadline for compliance is impossible to meet. The ACLU believes Congress will have to revisit Real ID. The legislation was attached as a rider to a "must pass" bill needed to finance the war in Iraq and provide Katrina relief.

Senator Rawson observed that the ACLU is causing tremendous tension in Las Cruces.

Senator Rodriguez stated the Real ID is an unfunded mandate that will place a burden on innocent individuals.

Senator Snyder said that back in the 1930s when the federal government first mandated states to issue driver's licenses, all of the same objections were raised that are being raised now with Real ID, yet today no one thinks twice about the routine procedure for obtaining a driver's license.

Other Business

The minutes of the June 21, 2006 meeting were unanimously adopted.

The committee adjourned at 12:30 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 5

August 2006
Agenda
Minutes

Revised: August 23, 2006

<u>TENTATIVE AGENDA</u>
for the
THIRD MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

August 24-25, 2006
Ruidoso Convention Center
Ruidoso, New Mexico

<u>Thursday, August 24</u>

9:30 a.m.	**Call to Order** —Representative Donald L. Whitaker, Chair
9:35 a.m.	**Welcome** —L. Ray Nunley, Mayor, Village of Ruidoso —Brad Treptow, Executive Director, Ruidoso Valley Chamber of Commerce
9:45 a.m.	**Tax Policy Transparency Recommendations** —Bill Jordan, Deputy Director for Policy, New Mexico Voices for Children —Gerry Bradley, Research Director, New Mexico Voices for Children
10:45 a.m.	**Gaming Revenue Report** —Dr. Tom Clifford, Chief Economist, Taxation and Revenue Department
11:15 a.m.	**Regulatory Authority of the State Racing Commission** —Eddie Fowler, Chair, State Racing Commission (SRC) —Julian Luna, Executive Director, SRC
12:45 p.m.	**Lunch**
1:45 p.m.	**Status Report on Racetrack and Casino Activity and Capital Outlay Credit** —Bruce Rimbo, President, Ruidoso Downs Racing, Inc. —Scott Scanland, Lobbyist, Sunland Park Racetrack and Casino —Luke Otero, Sunray Park and Casino —Ed Mahr, Lobbyist, the Downs at Albuquerque
2:45 p.m.	**Revenue Distribution to Horsemen, Breeders and Municipalities** —B.J. Valentini, President, New Mexico Horsemen's Association

—Anna Fay Davis, Executive Director, New Mexico Horse Breeders Association
—Julian Luna, Executive Director, SRC

3:45 p.m. **Recess**

Friday, August 25

9:00 a.m. **Reconvene**

9:05 a.m. **Transfer of Regulatory Authority over Parimutuel Wagering on Horse Racing**
—Carla Lopez, Chair, Gaming Control Board
—Julian Luna, Executive Director, SRC

9:45 a.m. **New Mexico Indian Gaming Association — Update**
—Charles Dorame, Director, New Mexico Indian Gaming Association

10:25 a.m. **Update on Indian Gaming in New Mexico**
—Mo Chavez, State Gaming Representative

11:00 a.m. **Class II Gaming Machines**
—Mo Chavez, State Gaming Representative

11:30 a.m. **Status of Charitable Bingo Regulation**
—Carla Lopez, Chair, Gaming Control Board

12:30 p.m. **Lunch**

1:30 p.m. **Surface Owner Protection Act**
—Raye Miller, Marbob Energy Corporation
—Bob Gallagher, New Mexico Oil and Gas Association

2:30 p.m. **Adjourn**

MINUTES
of the
THIRD MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

August 24-25, 2006
Ruidoso Convention Center, Ruidoso, New Mexico

The third meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Donald L. Whitaker, chair, at 9:30 a.m. on August 24, 2006 at the Ruidoso Convention Center in Ruidoso.

Present
Rep. Donald L. Whitaker, Chair
Sen. John Arthur Smith, Vice Chair
Rep. Janice E. Arnold-Jones (8-25)
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. Ben Lujan
Rep. Daniel P. Silva
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

Absent
Sen. Ben D. Altamirano
Sen. Mark Boitano
Sen. Kent L. Cravens
Sen. Joseph A. Fidel
Rep. George J. Hanosh
Sen. William E. Sharer
Sen. James G. Taylor

Designees
Sen. Sue Wilson Beffort (8/24)
Sen. Nancy Rodriguez (8-25)
Sen. John C. Ryan
Rep. Joe M Stell

Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Irvin Harrison
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Leonard Lee Rawson
Rep. Bill Rehm
Rep. Debbie A. Rodella
Rep. Henry Kiki Saavedra
Sen. Bernadette M. Sanchez
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela

(Attendance dates are noted for those members not present for the entire meeting.)
Staff

Tim Crawford, Legislative Council Service (LCS)
Cleo Griffith, LCS
Pam Ray, LCS
Stephanie Schardin, Legislative Finance Committee (LFC)
Doug Williams, LCS

Guests
The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, August 24

Welcome

L. Ray Nunley, mayor, Village of Ruidoso, welcomed the committee to Ruidoso. He said that Ruidoso is growing and that the availability of water is a concern. Ruidoso is also planning to expand the downtown area, improve camping facilities and become even more hospitable to tourists.

Senator Smith asked about new construction in Ruidoso. The mayor responded that because of the water situation, Ruidoso is currently at phase five, which means that no new construction permits are being issued.

Speaker Lujan asked about gross receipts tax (GRT) revenue. The mayor said that, despite the absence of snow during the 2005-2006 winter, GRT revenue was level compared to the 2004-2005 winter. GRT revenue this summer is greater than last summer.

Representative Silva asked about Ruidoso's water treatment plant. The mayor said that Ruidoso is in the process of replacing its 30-year-old plant because of the Environmental Protection Agency regulations concerning phosphorous.

Brad Treptow, executive director, Ruidoso Valley Chamber of Commerce, welcomed the committee to Ruidoso. He noted that Ruidoso has a racetrack, three casinos, the Apache ski area, two dinner theaters and a performing arts center.

Tax Policy Transparency Recommendations

Bill Jordan, deputy director for policy, and Gerry Bradley, research director, New Mexico Voices for Children, made a presentation concerning tax transparency.

The first recommendation is that New Mexico begin to prepare tax expenditure reports (TERs). They said that Texas and Minnesota prepare excellent TERs. Some 38 states prepare some form of a TER. Specifically, they recommend:

- New Mexico should prepare an annual TER as an appendix to both the legislature's and the governor's budget;

- the TER should show the amount of revenue the state gives up through tax expenditures; and
- food and health care deductions should be used as a prototype for what is needed. The Taxation and Revenue Department (TRD) Report 80 specifies the costs of the food and health care deductions.

The second recommendation is to begin tax incidence reporting, i.e., tax burden should be identified by income group. Specifically, they recommend:

- enactment of legislation requiring an annual analysis of how the overall burden of state taxes falls on taxpayers of various income levels;
- an analysis of tax burden by income group should be required for any new tax or fee that raises more than $1 million a year. This analysis should be performed as part of the fiscal impact report (FIR);
- an analysis of any proposal that would increase, decrease or redistribute taxes by more than $5 million as part of the FIR; and
- the prototype for this type of analysis can be found in the FIR for the 2003 PIT tax cut.

The third recommendation is to initiate economic development cost-benefit analysis. Specifically:

- the job training incentive program report on the Economic Development Department (EDD) web site is an excellent example of the type of information that should be available for all economic development incentives;
- TRD and EDD reports to the RSTP during the FY 2005 interim showed a good faith effort to begin to come to terms with the cost of economic development incentives, but an estimate of number of jobs created by economic development incentives is needed; and
- cost-benefit analyses of incentives would be a longer-term goal.

The fourth recommendation is to create a current services budget. Essentially, they suggest that the existing LFC five-year budget outlook should be expanded and contain more detail.

Senator Snyder is opposed to disclosure of economic development corporate tax credits.

Representative Taylor does not believe that tax incidence reporting would have any value. Also, he believes that tax expenditure reporting would impose an undue burden on businesses.

Representative Gardner believes that, after the first year of a tax cut, there is no longer a cost to the general fund.

Senator Smith asked if there is any theoretical limit to the maximum GRT rate. Mr. Jordan suggested that beyond a rate of eight percent it might be difficult to obtain voter approval.

Senator Beffort wants New Mexico to remain business friendly and not become overly intrusive. She also is an advocate of dynamic scoring with respect to evaluating economic development incentives.

Speaker Lujan believes that a TER would be helpful to legislative policymakers.

Gaming Revenue Report

Dr. Tom Clifford, chief economist, TRD, reported on the structure of New Mexico gaming taxes. The gaming tax is imposed at the rates that follow.

- Manufacturer and Distributor Licensees: The gaming tax is 10 percent of the gross receipts of manufacturer and distributor licensees from the sale, lease or other transfer of gaming devices into the state. Receipts of a manufacturer from sale to a distributor for subsequent sale may be deducted.
- Nonprofit Gaming Operator Licensees: The gaming tax is 10 percent of the net take of a gaming operator licensee that is a nonprofit organization.
- All Other Gaming Operator Licensees: The gaming tax is 26 percent of the net take of all other gaming operator licensees. Net take is defined as the amount wagered on gaming machines less the amount paid out in prizes less a deduction for regulatory fees.

In addition to the gaming tax, a racetrack operator licensee must pay 20 percent of the net take to purses to be distributed according to rules promulgated by the State Racing Commission (SRC). In addition, racetrack licensees must pay one-fourth percent of their net take to support programs for the treatment and assistance of compulsive gamblers.

Nonprofit operators must distribute for charitable or educational purposes at least 60 percent of their net take after paying gaming tax and income taxes.

The gaming tax was created in the 1997 legislative session at the same time that gaming compacts were authorized between the state and certain Indian tribes and pueblos. Nonprofit operators (certain veteran and fraternal organizations) and racetrack operators were authorized to operate video gaming devices. Nonprofits were limited to 15 machines each, while racetrack operators were limited to 300 machines each. The tax rate was set at 25 percent of net win for gaming operators and 10 percent of gross revenue for manufacturers and distributors.

In 1999, the distribution rate on nonprofit operators was cut from 88 percent to 60 percent. The gaming tax of 10 percent was implemented in 2001. Racetrack operators were allowed to increase to as many as 600 machines. Racetracks could transfer the right to operate a machine to another racetrack, but each track is limited to no more than 750 machines in operation.

The Hobbs racetrack started operation in November 2004, joining Albuquerque Downs, Ruidoso Downs, Sunland Park and Sunray, all of which have been licensed racetrack operators since 1997, when the law took effect allowing horse racetracks to be licensed as gaming machine operators.

Several changes were made by the 2005 legislature (Senate Bill 837). These changes took effect at the beginning of FY 2006:

- operating hours of racetracks were increased from 12 to 18 hours, with the provision that the total hours in which gaming machines are operated does not exceed 112 hours in a one-week period; and
- the gaming tax rate for racetracks was increased from 25 percent to 26 percent.

Speaker Lujan noted that the opening of the Hobbs racetrack appears to have negatively impacted wagering at Albuquerque Downs, Ruidoso Downs and Sunland Park.

Regulatory Authority of the State Racing Commission

Eddie Fowler, chair, and Julian Luna, executive director, SRC, made a presentation concerning the statutory authority of the SRC.

Senator Smith is opposed to the chair of the SRC being a member of the Gaming Control Board (GCB).

Senator Smith inquired about the trend in the number of racing days. Mr. Fowler provided the following statistics:

Year	2003	2004	2005	2006
# Days	249	254	288	303

Speaker Lujan asked about the number of licenses issued by the SRC. Mr. Fowler said that at present there are approximately 10,000 persons associated with the racing industry that are licensed.

Mr. Fowler noted that horse breeding in New Mexico is improving, with New Mexico horses winning approximately 35 percent of races.

Status Report on Racetrack and Casino Activity and Capital Outlay Credit

Bruce Rimbo, president, Ruidoso Downs Racing, Inc., briefed the committee on gaming at both Zia Park (Hobbs) and Ruidoso Downs. The key statistics for Zia Park in 2006 are:

- gaming taxes: $18,031,804;
- purses: $13,947,955;
- payroll: $5,836,602;
- races held: 466;
- number of starting horses: 3,978 (1,688 New Mexico-bred); and
- average number of horses per race: 8.54.

The key statistics for Ruidoso Downs in 2006 are:

- gaming taxes: $2,758,156;

- purses: $3,318,634;
- payroll: $4,547,215;
- races held: 582;
- number of starting horses: 4,685 (2,155 New Mexico-bred); and
- average number of horses per race: 8.05.

Scott Scanland, lobbyist, Sunland Park Racetrack and Casino, briefed the committee on gaming at Sunland Park. The key statistics for Sunland Park in 2005 are:

- gaming taxes: $25,797,912;
- purses: $104,554,577;
- payroll: $12,106,639;
- 84 percent of patrons are out-of-state residents; and
- number of racing days: 79.

Mr. Scanland said that the greatest concern for Sunland Park is the emergence of off-reservation casino gaming.

Luke Otero, Sunray Park and Casino, briefed the committee on gaming at Sunray Park. The key statistics for Sunray Park in 2006 are:

- gaming taxes: $7,490,131;
- purses: $5,761,637;
- payroll: $5,300,000; and
- annual number of visitors: 1,200,000.

Ed Mahr, lobbyist, Albuquerque Downs, briefed the committee on gaming at Albuquerque Downs. Mr. Mahr stated that the expanded hours of operation authorized by the legislature has resulted in a significant increase in gaming and state tax revenue.

Senator Smith asked about the number of slot machines. Albuquerque Downs operates 300 slot machines. Ruidoso Downs also operates 300 machines.

Senator Smith asked about the percentage of nonresident persons visiting the racetracks. Approximately 75 percent of patrons at Ruidoso Downs and Zia Park are nonresidents; 84 percent of patrons at Sunland Park are nonresidents.

Asked about changes that might be made at the various racetracks, Zia Park is switching racing from Thursday and Friday to Monday and Tuesday in order to simulcast to Las Vegas; Sunland Park would like to improve drainage around the track; and Albuquerque Downs would like the grandstand upgraded.

Representative Gonzales asked if racetrack employees are part- or full-time. Mr. Mahr responded that the expansion of operating hours has made it possible to hire employees full time.

Representative Gonzales asked if there is any education program that trains people for a career in the racing industry. Mr. Rimbo said that other than veterinarian programs at UNM and NMSU, there are no training programs. The University of Arizona and the University of Kentucky have racetrack management training programs.

Revenue Distribution to Horsemen, Breeders and Municipalities

B.J. Valentini, president, New Mexico Horsemen's Association, made a presentation concerning revenue distribution. Revenue distributed to horsemen is generated from parimutuel handle and slot machines and is designated for purses in New Mexico as follows:

- slot Machines - 20 percent of the net win;
- parimutuel handle - 50 percent of the net retained from the parimutuel handle (both live and simulcast);
- one-third of the outs tickets remaining after 90 days;
- one-fourth percent of the gross handle from incoming simulcasts; and
- entry fees paid by horse owners are also added to purses.

.

Purse money is distributed between stake races and overnight races as follows:

- stake races - represent the top level of competition with the largest individual purses. Generally, 15 percent to 20 percent of total purses for a given race meet are designated for stake races;
- overnight races - represent all nonstake races, including allowances, claiming and maiden races. This is where the vast majority of horses compete and generally, 80 percent to 85 percent of total purses for a given race meet are designated for overnight purses; and

- purses are usually distributed to the first six finishers of a race as follows:
    - 1st – 60 percent
    - 2nd – 20 percent
    - 3rd – 10 percent
    - 4th – 5 percent
    - 5th – 3 percent
    - 6th – 2 percent.

Anna Fay Davis, executive director, New Mexico Horse Breeders Association, (NMHBA) provided an overview of the association.

- The purpose of the NMHBA is to promote the breeding of racing quarter horses and thoroughbreds in New Mexico.
- New Mexico horse breeders have experienced growth in their industry and stability in their communities as a result of gaming revenues enhancing purses at New Mexico racetracks.
- The industry was in dire straights; however, as a result of legislative action, the industry is now healthy.
- Both new breeding operators and existing breeders reported purchases of more equipment, more feed and additional farm supplies such as fertilizer.

- Purchases appeared to be local and reinforced the established feed stores, livestock dealers and equipment sellers. In addition, breeders reported using more veterinarian and farrier services and increased hiring of part- and full-time employees. Again, these are local services and New Mexico residents.
- Enhanced purses and breeder incentives also mean steady racing schedules at racetracks and the addition of more and better horses participating at New Mexico racetracks.
- The number of employees required at New Mexico tracks continues to create jobs for New Mexicans. These are jobs at track facilities, including jobs on the backside of the racetrack where trainers, jockeys, exercise riders and grooms have all found more work.

The following chart provides a recent history of New Mexico-bred horse registrations:

HORSE REGISTRATIONS	2005	2004	2003	2002
NM-BRED FOALS				
Quarter Horse	866	817	739	656
Thoroughbred	702	600	499	464
Total	1,568	1,417	1,238	1,120
NM BROODMARES				
Quarter Horse	423	426	373	512
Thoroughbred	538	428	332	525
Total	961	854	705	1,037
NM STALLIONS				
Quarter Horse	29	22	26	33
Thoroughbred	54	40	31	38
Total	83	62	57	71

The following chart summarizes the recent history of races by New Mexico-bred horses by racing facility:

NEW MEXICO-BRED HORSE RACES	2005	2004	2003	2002
SUNLAND PARK				
Overnight Races	385	315	289	238
Trial Races	25	24	20	18
Stakes Races	20	20	19	13
Total Days of Racing	87	80	80	80
RUIDOSO DOWNS				
Overnight Races	157	141	162	138
Trial Races	28	32	20	18
Stakes Races	12	14	11	11
Total Days of Racing	60	61	61	61
NM STATE FAIR				
Overnight Races	42	37	34	32
Trial Races	15	17	20	16
Stakes Races	8	8	8	8
Total Days of Racing	17	17	17	17

ALBUQUERQUE DOWNS				
Overnight Races	162	161	123	116
Trial Races	7	0	0	0
Stakes Races	11	14	17	17
Total Days of Racing	42	53	51	48
SUNRAY PARK				
Overnight Races	148	158	117	102
Trial Races	8	9	8	5
Stakes Races	9	9	9	9
Total Days of Racing	38	44	40	35
ZIA PARK				
Overnight Races	166	NA	NA	NA
Trial Races	9	NA	NA	NA
Stakes Races	19	NA	NA	NA
Total Days of Racing	44	NA	NA	NA

Friday, August 25

Transfer of Regulatory Authority over Parimutuel Wagering on Horse Racing

Carla Lopez, chair, GCB, and Julian Luna, executive director, SRC, made a presentation of draft legislation that would modernize and clarify the duties of the GCB and SRC. The legislation would permit greater autonomy on the part of racetrack operators, e.g., the SRC would no longer set the price for a hot dog; concession operators would establish prices.

Senator Smith expressed concern that the proposed legislation is the first step to merging the two agencies. He stated that the intent of the legislature was to make horse racing preeminent and gaming secondary.

Senator Smith requested LCS staff to check with the National Conference of State Legislatures regarding the gaming and horse racing regulatory practices in other states.

Representative Arnold-Jones asked about the repeals contained in the proposed legislation. It was explained that the repeals are technical cleanup, e.g., there is a definition in current law that never actually appears anywhere in the law; therefore, the definition is superfluous.

Senator Rodriguez stated that she believes the GCB and SRC should remain separate entities but that duplication of duties should be eliminated.

Representative Taylor questioned the current makeup of the SRC Board. He believes the board should be more diverse and not dominated by breeders.

Speaker Lujan is in favor of eliminating duplication of effort between the GCB and SRC.

Senator Cisneros suggested that a section-by-section summary of the bill would be helpful.

New Mexico Indian Gaming Association

Charles Dorame, director, New Mexico Indian Gaming Association, made a presentation concerning the status of tribal gaming. He noted the following key points.

- The New Mexico Indian Gaming Association represents 12 of the state's gaming tribes, including the Pueblos of Acoma, Isleta, Laguna, Ohkay Owingeh, Sandia, San Felipe, Santa Ana, Santa Clara, Taos and Tesuque, the Jicarilla Apache Nation and the Mescalero Apache Tribe.
- Since the first state-tribal compacts were signed in 1995, tribal governments have paid the state in excess of $365 million in revenue shares, including all settlement payments, regulatory fees and revenue-sharing payments. In 2006, estimates indicate that tribal revenue-sharing payments to the state will exceed $50 million.
- Tribal governmental gaming has also had a positive impact on job creation in the state of New Mexico. Tribal governments and gaming enterprises employ more than 16,000 people. Nearly 75 percent of the individuals employed by tribes are nonmembers and live in surrounding communities.
- The growth in tribal governmental gaming will continue. Several pueblos are moving forward with expansion plans, including Isleta Casino & Resort, which plans to add a hotel and event center, and Ohkay Owingeh, which plans to expand its operations to include an event center. These projects will add additional jobs to the community and continue to fuel construction in the state. These are sustainable jobs that will not leave the community, but stay within the state and are not "enticed" by industrial revenue bonds, tax incentives or other types of state or nontribal government support. Tribal government gaming will continue to fuel growth in the state's tourism-dependent economy as the industry continues to transform into a resort destination industry.
- The market for tribal governmental gaming is predominantly local, but is changing to reflect an increase in out-of-state patrons, depending on location and amenities, and ranges from 10 percent to 65 percent. In particular, the Mescalero Apache Tribe has developed a destination-based market. The gaming operations along 1-40 also enjoy a high percentage of out-of-state tourists and Sandia Resort and Casino has seen an increase in out-of-state patrons since opening its new hotel.
- Tribal governmental gaming revenues go to fund vital government operations. Most of these revenues are used to replace lost funds from cutbacks at the federal level. Some examples of the programs that tribes fund through gaming include:
  - education scholarship programs;
  - health care programs;
  - elder care programs;
  - housing programs;
  - wellness programs; and
  - emergency projects that address urgent health and safety issues.
- Tribes view gaming enterprises as investments in our people and the investments are paying off. Between 1990 and 2000, tribes saw improvements in the poverty rates and

levels of education of tribal members. During that period, tribal governments in New Mexico benefited from gaming. The attached three graphs show some of that improvement. For instance, median household income rose from $18,568 in 1990 to $28,499 in 2000. Poverty levels dropped from 27.5 percent to 19.6 percent. Additionally, education levels rose.

Based on a study conducted by Global Insight, Inc., the Sandia Resort and Casino has the following economic impact.

- Total economic impact adds 0.3 percent to the state output.
- Pueblo of Sandia operations generate 1.7 percent of total state leisure-related jobs.
- Pueblo of Sandia direct operations contribute 3.2 percent of total state leisure and hospitality wage disbursements.
- Pueblo of Sandia will generate state and local tax receipts roughly equal to nine percent of New Mexico's 2005 corporate income tax collections.
- For each dollar spent at the Pueblo of Sandia, the state will receive $1.53.

.

Senator Ryan believes that the tribal gaming revenue sharing received by state government should be used to assist those tribes that are not able or not willing to engage in gaming.

Update on Indian Gaming in New Mexico

Mo Chavez, state gaming representative, stated that 13 tribes currently operate 18 casinos. Three of the six tribes that are not currently operating a gaming facility are considering gaming. In fiscal year 2006, tribal revenue sharing totaled $42 million. Revenue sharing is based on the net receipts from class III gaming machines only and is governed by a compact that will expire in 2015.

Class II Gaming Machines

Mo Chavez stated that class II gaming machines are essentially bingo games that must be played against a second player for the game to operate. The compact does not govern such gaming and there is no revenue sharing with respect to class II gaming. However, any class II gaming machine on non-Indian land on the premises of a racetrack or nonprofit gaming operator would be included in the count of gaming machines allowed on those premises and the net take from those machines would be taxable.

Currently, none of the tribes are using class II machines. Also, nonprofits that are permitted to operate bingo games, pursuant to the Bingo and Raffle Act, may not use the class II electronic machines due to the opinion in *Citation Bingo, Ltd, v. Otten (1995)*.

It is very difficult for the layperson to identify the difference between class II and class III gaming machines.

Senator Rodriguez would like to establish a graduated revenue-sharing system that relates to the amount of gaming net receipts. She believes that some of the smaller operations are having difficulty with the current eight percent revenue-sharing agreement.

Status of Charitable Bingo Regulation

Carla Lopez, chair, GCB, stated that, in FY 2006, regulation of bingo was transferred from the Regulation and Licensing Department (RLD) to the GCB. License revenue was transferred from the RLD to the TRD.

Surface Owner Protection Act

Raye Miller, Marbob Energy Corporation, and Bob Gallagher, New Mexico Oil and Gas Association, made a presentation concerning the relationship between oil and gas producers and cattle ranchers.

Proposed legislation is referred to as the Surface Owner Protection Act. The bill requires communication between producers and landowners and allows for compensation to be paid to landowners in the event producers damage the land. The bill does not imply or suggest that producers will pay for use of the land.

Other Business

The minutes of the July 27-28, 2006 meeting were unanimously approved.

The committee adjourned at 12:05 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 6

September 2006
Agenda
Minutes

Revised: September 8, 2006

<u>TENTATIVE AGENDA</u>
for the
FOURTH
MEETING IN 2006
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

September 11-13, 2006
Eunice Community Center
Eunice, New Mexico

<u>Monday, September 11</u>

9:30 a.m.	**Call to Order** —Representative Donald L. Whitaker, Chair
9:35 a.m.	**Welcome** —Matt White, Mayor, City of Eunice —Harry Teague, Chair, Lea County Board of County Commissioners
10:15 a.m.	**National Enrichment Facility Update** —Marshall Cohen, Vice President, Communications and Government Relations, National Enrichment Facility
11:00 a.m.	**Soil and Water Conservation District Assessment Sunset** —Debra Hughes, Executive Director, New Mexico Association of Soil and Water Conservation Districts
12:00 noon	**Lunch**
1:15 p.m.	**Land, Wildlife and Clean Energy Act** —Reese Fullerton, Deputy Secretary, Energy, Minerals and Natural Resources Department (EMNRD)
1:45 p.m.	**Land, Wildlife and Clean Energy Act** —J.D. Bullington, Lobbyist, World Wildlife Fund
2:15 p.m.	**Renewable Energy Proposals** —Craig O'Hare, Special Assistant for Renewable Energy, EMNRD
3:00 p.m.	**Taxation and Revenue Department (TRD) Legislative Proposal Review** —Ken Ortiz, Director, Motor Vehicle Division, TRD
4:30 p.m.	**Recess**

<u>Tuesday, September 12</u>

9:00 a.m.	**Reconvene** —Representative Donald L. Whitaker, Chair
9:05 a.m.	**Stabilizing Local Tax Bases — Ensuring Adequate Local Authority and Distributions from the State** —Bill Fulginiti, Executive Director, New Mexico Municipal League —Tasia Young, Legislative Liaison, New Mexico Association of Counties
10:05 a.m.	**Statewide Transit Fund** —Jack Valencia, New Mexico Transportation Association
11:00 a.m.	**TRD Legislative Proposal Review** —Dr. Tom Clifford, Chief Economist, TRD
12:00 noon	**Lunch**
1:15 p.m.	**TRD Legislative Proposal Review** —Dr. Tom Clifford, Chief Economist, TRD
2:45 p.m.	**Tax Policy That Produces Social Change** —Rob Dickson, Vice Chair, Governor's Task Force on Our Communities, Our Future —Debi Lee, City Manager, Portales
3:30 p.m.	**Recess**

Wednesday, September 13

9:00 a.m.	**Reconvene**
9:05 a.m.	**Gross Receipts Tax Deduction for Activities Officials** —Senator Vernon D. Asbill, District 34, Eddy and Otero Counties —Gary Tripp, Executive Director, New Mexico Activities Association (NMAA) —Dana Sanchez, Assistant Director, NMAA, and Commissioner of Officials
9:45 a.m.	**Functional and Economic Obsolescence of Equipment and Assets** —Tim Eichenberg, Director, Property Tax Division, TRD —Michael O'Melia, Deputy Director, Property Tax Division, TRD
12:00 noon	**Adjourn**

MINUTES
of the
FOURTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

September 11-13, 2006
Eunice Community Center, Eunice, New Mexico

The fourth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Donald L. Whitaker, chair, at 9:30 a.m. at the Eunice Community Center in Eunice.

Present	**Absent**
Rep. Donald L. Whitaker, Chair	Sen. Ben D. Altamirano
Sen. John Arthur Smith, Vice Chair	Sen. Mark Boitano
Rep. Janice E. Arnold-Jones (9/11)	Sen. Kent L. Cravens
Sen. Carlos R. Cisneros (9/12-9/13)	Sen. Joseph A. Fidel
Rep. Anna M. Crook	Rep. George J. Hanosh
Rep. Keith J. Gardner	Sen. William E. Sharer
Rep. Roberto "Bobby" J. Gonzales	
Rep. Ben Lujan (9/11-9/12)	
Rep. Daniel P. Silva	
Sen. H. Diane Snyder (9/11-9/12)	
Sen. James G. Taylor (9/11-9/12)	
Rep. Thomas C. Taylor	

Designees	
Rep. Donald E. Bratton (9/12/06)	Sen. Sue Wilson Beffort
Sen. Gay G. Kernan (9/11/06)	Sen. Phil A. Griego
Rep. Joe M Stell	Sen. John T.L. Grubesic
	Rep. Irvin Harrison
	Rep. Manuel G. Herrera
	Sen. Stuart Ingle
	Sen. Cisco McSorley
	Sen. Steven P. Neville
	Rep. Andy Nunez
	Sen. Leonard Lee Rawson
	Rep. Bill Rehm
	Rep. Debbie A. Rodella
	Sen. Nancy Rodriguez
	Sen. John C. Ryan
	Rep. Henry Kiki Saavedra
	Sen. Bernadette M. Sanchez
	Rep. Don L. Tripp
	Rep. Luciano "Lucky" Varela

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Tim Crawford, Legislative Council Service (LCS)
Cleo Griffith, LCS
Norton Francis, Legislative Finance Committee (LFC)
Pam Ray, LCS
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, September 11

WELCOME FROM CITY OF EUNICE AND LEA COUNTY

Matt White, mayor, City of Eunice, and Harry Teague, chair, Lea County Board of County Commissioners, were present to welcome the committee members to Eunice and to Lea County.

Mr. White provided an overview of the City of Eunice. He noted that:

- the city has a population of 2,500;
- 200 new homes are being planned;
- 300 new jobs will be created by the Louisiana Energy Services (LES) National Enrichment Facility (NEF);
- the city is located on an oil field and water is piped in from Hobbs, which is 24 miles to the north; and
- the city is applying for a grant from the New Mexico Finance Authority to replace the existing 50-year-old water line.

NATIONAL ENRICHMENT FACILITY UPDATE

Marshall Cohen, vice president, Communications and Government Relations, NEF, presented an update on the progress of LES construction of the NEF outside Eunice.

LES is a limited partnership formed to license, construct and operate the NEF. LES is investing $1.5 billion and will process 25 percent of the uranium used for fuel in United States commercial nuclear power plants. The plant will have 800,000 square feet under one roof.

At the present time:

- 20 percent of United States electricity comes from nuclear power;
- 20 percent of New Mexico electricity comes from nuclear power; and
- the United States produces nine percent of the enriched uranium used in United States power plants today.

LES will reduce the dependency on foreign imports of nuclear fuel, although at least three-fourths of the enriched uranium required in the United States will still come from other countries. National security and energy independence for the United States are considered to be very important factors in the national support for the NEF.

The gas centrifuge technology that will be used was developed by Urenco, a consortium of the British, Dutch and German governments. The technology for the NEF:

- has proven to be the world's most advanced, energy-efficient and cost effective technology for enriching uranium;
- has successfully been used for over 30 years in Europe;
- is currently used in three enrichment plants in Europe: Capenhurst, United Kingdom, Gronau, Germany, and Almelo, The Netherlands; and
- has never been used in the United States.

LES is committed to local hiring, training and purchases for construction and operation. The economic benefits to the region include:

- diversification of the region's economic base;
- employment for more than 1,000 construction personnel during peak construction (total payroll estimated to be $170 million) over seven years;
- employment for close to 300 full-time and contract operations personnel with an average salary of over $83,000 in the near term with an annual payroll of $15 million; 90 percent of the salaries will be over $40,000; and
- several million dollars in annual purchases of supplies and services is anticipated.

NEF began selecting candidates for regular jobs upon approval of the license. Some employees will be trained for two to three months in Europe. The following categories of jobs are available at the NEF:

- facility operators;
- shift supervisors;
- radiation protection and chemistry technicians;
- maintenance technicians for mechanical, electrical, instrumentation and controls maintenance; and
- security guards.

Also, NEF is working with the New Mexico Junior College to develop future educational and training opportunities for students interested in employment at the NEF.

LES currently has 45 employees. The schedule for future hiring of employees who will not be involved in the construction of the plant, will be:

- within six months, 100 employees;

- within one year, 175 employees; and
- within two years, 210 employees.

LES estimates that it will spend:

- between $265 million to $462 million on goods and services in the local economy throughout the construction phase;
- $9.6 million in annual purchases of goods and services; and
- over $26 million in New Mexico for construction-related goods and services.

The New Mexico taxes LES is estimated to pay over the 30-year life of the plant are:

- state income tax, $330 million;
- property tax, $17 million; and
- unemployment tax, $13million.

Estimated tax payments during construction are:

- gross receipts, $12 million;
- withholding tax, $8 million; and
- total estimated tax payments, $380 million.

Representative Stell asked about the estimate of property taxes that LES will pay. Mr. Cohen responded that the estimate is a negotiated payment in lieu of taxes because the plant will be receiving industrial revenue bonds and property taxes have been deferred.

Representative Silva asked if the Taxation and Revenue Department (TRD) has estimated the tax revenue that will result from increased economic activity in Eunice. Mr. Cohen responded that no estimate has been made at the present time.

Speaker Lujan asked about cooperation between LES and the City of Eunice. Mr. Cohen responded that LES is working with the city and providing matching funds for the construction of the new water line.

Speaker Lujan observed that LES will be paying gross receipts taxes when the plant is fully functional and selling enriched uranium.

Representative Crook asked about community concerns. Mr. Cohen noted that there are groups opposed to nuclear energy and the LES facility. However, LES has already been issued an operating license by the Nuclear Regulatory Commission (NRC). Mr. Cohen volunteered to assist legislators in responding to constituent concerns.

Representative Arnold-Jones asked about disposal of waste. Mr. Cohen said that LES will be constructing a decommissioning plant that will convert waste product into uranium oxide and fluorine.

Representative Gonzales asked if LES is partnering with Los Alamos National Laboratory. Mr. Cohen said that LES is cooperating with the national laboratories, but has no formal partnership.

SOIL AND WATER CONSERVATION DISTRICT ASSESSMENT SUNSET

Debra Hughes, executive director, New Mexico Association of Soil and Water Conservation Districts, explained that the 47 soil and water conservation districts are political subdivisions of the state. They are governed by locally elected boards of supervisors. Soil and water conservation districts also have additional statutory responsibilities, included in the Watershed District Act, the New Mexico Subdivision Act, the Water Project Finance Act and the New Mexico Forest Re-Leaf Act, and are involved with the Water Quality Control Commission, the Surface Mining Commission, the Farm and Range Improvement Fund and other state programs. Soil and water conservation districts also administer funds and programs through memorandums of understanding (MOU) with other state and federal agencies.

Each district has a MOU signed with the United States Department of Agriculture (USDA) - Natural Resources Conservation Service (NRCS). Most districts are co-located with NRCS in the USDA Service Centers. The MOU allows the districts to share equipment, staff, offices, etc. NRCS provides technical and financial support for landowners through soil and water conservation districts.

Representative Stell spoke in support of the work done by the 47 soil and water conservation districts. He noted that board members are elected and not paid.

Representative Gonzales asked about the sunset of the mill levy authority. Ms. Hughes responded that the request is to extend the mill levy authority. Authorization to actually impose the levy would still require approval of the voters through a referendum.

Representative Arnold-Jones asked what financial resources are available to the soil and water conservation districts with respect to conducting referenda. Ms. Hughes said that the districts receive an annual appropriation of $10,000 from the legislature to cover all costs. Representative Arnold-Jones asked if the districts receive assistance from the secretary of state. Ms. Hughes said that the secretary of state provides training and assistance with respect to district boundaries. District boundaries are not contiguous with any other political subdivision.

Senator Snyder expressed concerns about taxation without a set review. Also, Senator Snyder expressed concern that there might be some duplication of duties and responsibilities.

Speaker Lujan requested a list of competitive federal conservation grants.

Representative Taylor asked how many districts have currently imposed taxes. Ms. Hughes said that 22 of the 47 districts currently have imposed a one mill-property tax.

LAND, WILDLIFE AND CLEAN ENERGY ACT

Reese Fullerton, deputy secretary, Energy, Minerals and Natural Resources Department (EMNRD), gave a general overview of the Land, Wildlife and Clean Energy Act. He stated that the need has never been greater in New Mexico for a reliable source of funds to protect and improve land, watersheds, farms and ranches and reduce dependence on nonrenewable sources of energy. New Mexico is one of a few western states that does not have a dedicated funding source to address these goals. This legislation would provide a permanent source of funding for land, wildlife and clean energy projects for New Mexico, and proposes that a portion of the revenue from the already existing oil and gas conservation tax be used to provide financial support for a bonding fund and for a fund for loans and grants that could be used in a variety of ways, such as:

- helping farms and ranches remain in production;
- wildlife projects;
- land conservation initiatives; and
- clean energy projects.

The legislation will help New Mexico capture millions in additional federal and private funds that are currently off limits because there is no readily available source of state matching funds. Also, a reliable source of available funds will keep farms and ranches in production rather than being sold to the highest bidder. Finally, conservation projects benefit from dedicated funding in two very important ways: first, the need to protect property can arise overnight and the ability to respond rapidly is often not possible unless funding is available immediately; and second, real property transactions can be complex, requiring funding in more than one budget cycle to close and be managed.

Leanne Leith, program director, Conservation Voters of New Mexico, provided more information about the Land, Wildlife and Clean Energy Act. She discussed public support for protecting working lands and natural areas, which is extremely high. Research and Polling, Inc., found in April 2006 that 75 percent of New Mexicans support dedicating $20 million of existing oil and gas revenues each year to conserving open spaces. Previous studies pegged public support for similar measures at anywhere between 61 percent and 84 percent, and the support is strongly bipartisan. Although there is no polling data on clean energy, it is fully anticipated that support for significant investment in renewable technologies is just as high.

The coalition presented the Land, Wildlife and Clean Energy Act to the interim Water and Natural Resources Committee back in July, and the committee was diligent and thorough. One of the more significant issues raised at the Water and Natural Resources Committee hearing was the request for dedicated funding to meet the purposes of the act. While open to discussing alternative funding scenarios to the one currently proposed in the bill, Ms. Leith stressed that the need for funding must be significant, sustained and predictable.

New Mexico is already lagging behind most states in funding protection of farms, ranches, habitats and open spaces. The following is an example of funding provided by other states:

- Arizona: $43 million;
- Arkansas: $52 million;
- Colorado: $38 million;
- Missouri: $73 million; and
- Washington: $37 million.

These figures are for conservation only. They do not include investments in clean energy, which the Land, Wildlife and Clean Energy Act does cover. The lack of sustained revenue means that each year the state misses out on millions of dollars of federal funds that could be matched under various programs as well as the private and local investment that could otherwise be leveraged.

Sid Goodloe, a rancher from the Carrizozo-Capitan area, spoke in favor of the state providing a steady stream of funding to protect farm and ranch lands and to allow farm and ranch families to remain on their land for generations to come. In order to avoid inheritance tax and preserve his ranch for his children intact, Mr. Goodloe created a conservation easement. He noted that the difference between fair market value and use value is the value of development rights.

Jack Wright, professor, New Mexico State University, also spoke in favor of the Land, Wildlife and Clean Energy Act. Professor Wright endorsed the governor's proposed legislation.

Representative Arnold-Jones asked about duplication of responsibilities among the new board contained in the proposed legislation, the State Engineer's Office and soil and water conservation districts. Mr. Fullerton stated that the proposed legislation does not conflict with or duplicate the duties of the State Engineer's Office. Representative Arnold-Jones also noted that earmarking part of the oil and gas conservation tax will permanently reduce general fund revenue. Representative Arnold-Jones also strongly objected to the legislature delegating to a board, over which the legislature has no control, the legislature's authority to review revenues and to determine the need for, and the ability of the state to provide, appropriations.

Representative Crook asked how projects would be chosen for funding. Mr. Fullerton responded that an appointed board would determine what projects would be funded.

Senator Taylor is skeptical that support for the bill is as widespread as portrayed.

Representative Stell would prefer that the fund created by the proposed legislation be financed by an annual appropriation from the legislature rather than earmarking tax revenue. Also, Representative Stell believes that the proposed legislation duplicates what other existing state agencies already have the responsibility to do. Mr. Fullerton stated that other existing programs have been sporadically funded. The proposed legislation creates a dedicated revenue source that may be used to match federal funds.

Representative Silva asked how much money is involved with the earmarking. Mr. Fullerton stated that the current oil and gas conservation tax revenue is approximately $20 million per year, but also noted that the administration has not yet decided how $20 million should be earmarked. Representative Silva also asked about the proposal to grant a bonding authority to the new board. Mr. Fullerton stated that a dedicated revenue stream is necessary to support the issuance of bonds.

Senator Snyder requested a summary of similar provisions in other states, and said she believes that the new initiative contained in the proposed legislation should compete for a general fund appropriation each year rather than earmarking revenue.

Representative Taylor observed that the legislation would provide funding in perpetuity but that there must be a finite limit to the number of conservation districts that might be created. He suggested that there be a cap on the new fund with an excess balance reverting to the general fund.

RENEWABLE ENERGY PROPOSALS

Craig O'Hare, special assistant for renewable energy, EMNRD, discussed proposals of the department that will strengthen New Mexico's renewable energy programs. His key points were that renewable energy includes use of solar, wind, biomass and geothermal resources. Energy efficiency is also a goal of the proposals he presented, especially in state buildings, appliances, industry and manufacturing, transportation and vehicles. Cleaner fuels such as ethanol, biodiesel, compressed natural gas, propane and hydrogen are also needed. The primary benefits of the proposals he presented would be to position New Mexico as a competitive leader in the new energy economy and to reduce consumers' energy bills in the face of high fuel costs (natural gas and gasoline). Additional benefits emphasized by Mr. O'Hare were:

- reducing state and local government operating costs for lower utility bills and savings to the taxpayer;
- helping businesses and industries to become more cost-competitive;
- protecting New Mexico's natural areas and decreasing consumption of water;
- establishing New Mexico's contribution toward national energy security; and
- protecting public health by reducing air pollution and greenhouse gas emissions.

New Mexico is competing with other countries and states, including California, Texas, Pennsylvania, New York, New Jersey and Arizona, for this emerging piece of the economic "pie". Clean energy projects and related manufacturing offer significant economic stimulus and job creation. By the year 2100, the nation's energy-based economy will not look much like today's energy economy, but will consist of renewables, state-of-the-art efficiency, fuel cells, plug-in hybrid vehicles, nanotechnology and other things not yet imagined or in use.

As this transition unfolds, there will be winners and losers, including states, countries, multinational companies and small start-ups. The change should resemble the transition in transportation-related economy in the first decade of the 1900s (horse and buggy versus the automobile).

Representative Taylor asked why nuclear energy is not included on the list of clean energy fuels. Mr. O'Hare responded that some people do not view nuclear energy as clean energy because of the waste.

Representative Gonzales recommended that energy efficiency concepts should be incorporated in the public school curriculum so that young people are educated from an early age, to which Mr. O'Hare agreed.

Representative Silva asked about the cost differential involved in building a "green" building. Mr. O'Hare said that studies show the differential is a maximum of three percent more than conventional construction.

TRD LEGISLATIVE PROPOSALS — MOTOR VEHICLES

Ken Ortiz, director, Motor Vehicle Division, TRD, presented two bills. The first deals with commercial vehicles owned by trucking companies in Mexico that use New Mexico as their United States home-base pursuant to provisions of the North American Free Trade Agreement (NAFTA). These trucks would not be required to obtain a New Mexico certificate of title. This proposal would result in Mexico-based carriers paying the lower weight distance tax in lieu of the trip tax. However, since the current policy of requiring trip tax payments can be challenged as a violation of the NAFTA, it is an unsustainable policy and the state would eventually be forced to adopt a nondiscriminatory taxing scheme. The proposal constitutes such a scheme, and, therefore, is consistent with the state's long-term revenue outlook.

NAFTA requires states to give full status to Mexico-based commercial trucking operators that wish to carry commercial loads into the United States. Although Mexican carriers have not yet been authorized to operate everywhere in the United States, Mexican carriers currently work together with United States companies by delivering their loads in certain areas within the United States but near the border. Currently, these operators are paying the New Mexico trip tax each time they enter the state with a load. The trip tax is required from operators that are not registered with New Mexico or another state or province that participates in the International Registration Program (IRP). If these operators proceed to other states, they owe the trip tax to those states as well. The trip tax rate is much higher than the equivalent weight distance tax plus vehicle registration fees and it also requires more time on each trip. The problem with registering in New Mexico under current law is that the carrier would have to give up its Mexican registration, which it will need upon the return trip into Mexico. These problems will be exacerbated if and when President Bush authorizes Mexican carriers to operate throughout the United States.

The proposal would enable New Mexico to work around the registration problem. Mexican carriers would be able to register with New Mexico, which would qualify them for IRP in all states and Canadian provinces. Although the carriers would owe the weight distance tax, New Mexico could not be accused of discriminating against Mexican carriers by requiring them to pay the higher trip tax. In addition, since carriers would be required to be in compliance with fuel tax and weight distance tax reporting, the proposal will enhance the state's compliance tools with regard to these carriers.

Tuesday, September 12

HIGHWAY PROJECT SHORTFALLS — WEATHER- AND MATERIALS-RELATED COST INCREASES

State Transportation Commission Chair Johnny Cope was added to the agenda to discuss some issues of which he thought the committee should be made aware.

Mr. Cope noted that summer rains have placed a strain on highway budgets. The Department of Transportation (DOT) remains committed to completing GRIP projects; however, there is at least a $200 million shortfall. He suggested that excess oil and gas revenue might be used to support these highway projects that already have been authorized but are at risk of not having sufficient funding to be completed due to increased costs of materials used in road construction.

Senator Smith noted that the general fund reserve has swelled to approximately $1 billion and that the highway shortfall due to inflation and the weather-related problems may be as high as $300 million. He indicated that it may be prudent to devote some funds to highway projects while revenues are at such high levels.

Senator Smith requested staff to explore the "gas tax loophole" to identify the level of funds that the state is losing due to tribal distributors that are given exemptions from the gasoline excise tax.

The DOT suggested that the gas tax should be structured as a percentage of price rather than as a flat-rate excise tax.

Representative Silva expressed concern about completing GRIP I and GRIP II and the shortfall in available maintenance funds. He also noted that the RailRunner Project is not the reason for the shortfall in highway funds. This statement was supported by Mr. Cope.

Speaker Lujan noted that GRIP has provided thousands of jobs in New Mexico, that the focus is on hiring New Mexico contractors and that projects have been broken into smaller contracts so that New Mexico contractors can bid on them. Also, he stated that inflation has eroded the buying power of the flat gasoline excise tax.

LEA COUNTY REHABILITATION CENTER

Hector Ramirez, county commissioner, Lea County Board of County Commissioners, and Rick Bruce, Lea County manager, were also added to the agenda to speak about the need for funding for a regional substance abuse rehabilitation center. The Lea County Rehabilitation Center (LCRC) could be an alternative to detention programs for nonviolent alcohol and substance abusers. It will be a residential, financially self-supporting work-release program that will provide meals, housing and transportation. Community support and collaboration will be required from the judicial system, local employers, probation and parole officers, law enforcement and local government.

Upon arrival at LCRC, residents will complete an intake assessment. The core of the program will include sobriety, participation in the 12-step programs and employment. All facets of the program support these main ideas. Sobriety will be monitored through consistent drug and alcohol testing. There will be a zero-tolerance policy for not adhering to sobriety. Participation in the 12-step program will begin immediately and will remain the residents' priority throughout their participation in the program.

The first 30 days will be consumed with participation in the 12-step program, drug awareness, classes and addiction groups. Upon completing the initial 30-day stay, employment will be mandatory. Assistance will be provided in identifying and securing employment opportunities. From the beginning of employment, 75 percent of a residents' wages and earnings will go toward supporting operational costs at LCRC. The remainder of the residents' wages will be held in trust by the operating entity and could be used to pay outstanding fines and other obligations of the resident. Upon successful completion of the required stay, the resident will be given the balance of the resident's account.

Representative Whitaker supports the concept of a self-sustaining rehabilitation center.

Senator Cisneros suggested that the Labor Department may have federal funds available to facilitate creation of the rehabilitation center. He suggested that Mr. Bruce contact Jackie Ingle at the Labor Department to see if he can apply for federal funds that should soon be available.

STABILIZING LOCAL TAX BASES — ENSURING ADEQUATE LOCAL AUTHORITY AND DISTRIBUTIONS FROM THE STATE — A HISTORICAL PERSPECTIVE

Bill Fulginiti, executive director, New Mexico Municipal League, and Tasia Young, representing the New Mexico Association of Counties (NMAC), spoke about the current status of local tax revenues and the need to provide a system that provides a tax base that will not fluctuate when the tax system at the state level is adjusted. Mr. Fulginiti began discussing the perspective of municipalities. In order to understand today's composition of revenues for municipalities, it is necessary to examine the past. Three taxes that are now called "state-shared taxes" actually had their origins as "locally imposed taxes". These three taxes do not fit the category of "locally imposed" or "state-shared" in the tax research nomenclature. They could be included in "locally imposed" because of their origins or might be categorized as "state distributions" that were previously locally imposed.

One of the earliest taxes that the legislature had authorized municipalities to impose was a local option gasoline tax at a rate not to exceed $.01 per gallon on each gallon of gasoline or diesel fuel sold within the municipal boundary. Through the years, 65 cities, towns and villages have adopted ordinances imposing a tax on the sale of motor fuel. All but seven of these municipalities imposed the tax at the maximum rate of $.01 per gallon.

In 1967, the authority for municipalities to levy the $.01 per gallon tax on motor fuel was repealed by the legislature and an additional $.01 per gallon tax was added to the state motor fuel tax, raising the state tax from $.06 to $.07 per gallon. The revenue from this $.01 increase is accounted for in a separate fund. Nine-tenths of these receipts are returned to all municipalities in New Mexico. The amount distributed to the individual municipality is based on the ratio of the number of gallons of motor fuel sold in that municipality to the total number of gallons of motor fuel sold within the boundaries of all municipalities. The remaining one-tenth of the $.01 increase is allocated to the counties and distributed to each county in the proportion that the sales in the unincorporated area of the county bears to the total sales of motor fuel in the unincorporated areas of all counties.

The revenue from the distribution of motor fuel tax receipts must be spent for street maintenance, construction or reconstruction by a municipality and may be pledged to retire gasoline tax revenue bonds, airport revenue bonds or special assessment bonds whose funds are used for street improvements. An exception was passed to allow municipalities of less than 3,000 in population to use that first $.01 for general fund purposes.

In 1988, the legislature passed an increase in the gasoline tax. Municipalities received an additional $.01 distribution based on point of sale. The use of these funds is also restricted.

A second local option tax that was moved from the local level to the state level is the "gross receipts" tax. Although commonly referred to as a "sales" tax, it is a gross receipts tax levied on the privilege of doing business in the municipality or in the state.

In 1955, the legislature authorized municipalities of over 75,000 (namely Albuquerque) to levy a $.01 tax on the gross receipts of persons doing business in the municipality. In 1957, the population limit was removed. Subsequently, in 1959, the law was changed to allow the governing body to levy the tax without a prior vote of the people. However, the people could petition for a vote on the question. If a proper petition was filed, the "sales" tax did not become effective until approved by a majority of the electorate voting on the question. By 1968, voters in 52 cities, towns and villages had concurred in levying a $.01 sales tax, and more than 60 percent of the state's population was paying a "sales" tax to support their municipal governments. During the 1969 legislative session, the local option municipal "sales" tax law was repealed and the state's gross receipts and compensating tax was increased from three percent to four percent. The new law provided "that an amount equal to one percent of the taxable gross receipts reported for each municipality for the month of deposit shall be distributed to each municipality". It became effective on July 1, 1969.

Throughout the 1970s, municipalities were granted additional local option gross receipts increments (usually in one-fourth percent increments). In 1981, legislation (commonly referred to as "Big Mac") was passed converting the first one-fourth percent of the local option granted in 1975 to a one-fourth percent state distribution and a new one-fourth percent local option was authorized. In the same legislation, the "municipal occupation tax" (one-tenth percent of gross receipts) was also converted to a one-tenth percent state distribution. The municipal distribution as a result of "Big Mac" changed from one percent to 1.35 percent.

Ten years later, the legislature reduced the municipal distribution (previously locally imposed) from 1.35 percent to 1.225 percent. The effect was to reduce revenues by one-eighth percent to municipal general funds. In 1992, the legislature authorized a one-eighth percent local infrastructure tax to replace the loss in distribution from the previous year. The 1998 legislature authorized an additional one-eighth percent infrastructure gross receipts tax, subject to a positive referendum, for economic development and other purposes designated by the governing body. This authority could only be implemented after January 1, 1999. In 2001, the legislature authorized a new one-fourth percent local option gross receipts tax for capital outlay and, in 2005, the legislature authorized a new one-fourth percent local option gross receipts tax for quality-of-life programs, which sunsets January 1, 2016.

Another tax that had a short life as a local option municipal tax was the cigarette tax. In 1951, municipalities were authorized to levy a tax of $.01 on each package of 20 cigarettes sold within the municipality. The money from this tax was earmarked for juvenile recreation purposes. Around 1955, this authority was repealed and the state cigarette tax was increased by $.01. The $.01 was redistributed to each municipality or county according to the number of packs of cigarettes sold in the municipality or in the county in the area outside of the municipality. In 1969, the purpose for which this tax money could be spent was broadened to include any recreation activity.

In 1968, the state cigarette tax was increased from $.08 to $.12 per pack of 20 cigarettes with $.02 of the increase being returned to the municipalities and the counties to provide or improve necessary services such as police and fire protection, increased salaries for low-income public employees and adequate facilities for the young and elderly.

STABILIZING LOCAL TAX BASES — ENSURING ADEQUATE LOCAL AUTHORITY AND DISTRIBUTIONS FROM THE STATE TO COUNTIES

Ms. Young continued the discussion of adequacy and stability of local tax bases. She noted that the Blue Ribbon Tax Reform Commission of 2003 raised a number of issues related to local government taxation and revenue generating powers. Commission member and Sandoval County Manager Debbie Hayes and NMAC Executive Director Sam Montoya were particularly concerned about the complexity and adequacy of gross receipts taxing authority for county government. Many gross receipts tax increments were unused and unusable for counties because they were limited to just one or very few particular counties or purposes. In 2004, the legislature authorized a new general purpose one-sixteenth percent of gross receipts tax that gave counties seven-sixteenths percent of general purpose gross receipts tax available to them. Each of these may be enacted independently of the others. Also, the sunset provision was removed from any new enactment or reenactment of several tax increments, including the county fire protection excise tax, the county emergency communications and emergency medical services and the expanded county correctional facilities gross receipts tax.

The use of the County Correctional Facility Gross Receipts Tax Act was made available to all counties. Its purpose was broadened to include operating and maintaining as well as constructing correctional facilities and transporting and extraditing prisoners. As of July 2006, 21 of 33 counties have enacted the expanded correctional facilities tax. In some cases, such as Hidalgo County, the commission enacted one of the general purpose one-eighth percent increments prior to the effective date of the expanded tax, and dedicated it for correctional purposes. Hidalgo County is considering adding the one-eighth increment for corrections.

Clearly, the expanded tax has given counties some relief for their escalating law enforcement costs. However, in many counties, both large and small, this additional income has not kept up with increasing costs. Bernalillo County levied the new one-eighth percent increment this July; it will generate approximately $19 million. The county estimates that its total jail budget will reach $100 million in five years.

REIMBURSEMENT FROM STATE FOR COUNTY EXPENSES FOR HOUSING STATE PRISONERS — NUMBER ONE COUNTY PRIORITY

The NMAC for several years has requested that the legislature appropriate funds to reimburse counties for the cost of housing felony offenders in county detention facilities. The association is in the process of developing this legislation for the 2007 session and is working with the New Mexico Sentencing Commission. The LFC considered this issue in its May meeting in Carlsbad and the interim Courts, Corrections and Justice Committee will look at this issue in its October meeting in Hobbs. The problem of rapidly increasing law enforcement costs based on mandates to house state prisoners and inadequate revenues to provide for them is the number one legislative priority for the NMAC for 2007.

INCREASE LIQUOR EXCISE TAX COUNTY DISTRIBUTION — NUMBER TWO COUNTY PRIORITY

The second NMAC legislative priority for 2007, also related to taxing authority and revenue adequacy, is to increase the distribution of liquor excise tax revenues to local DWI programs. An increase in the current distribution of 34.57 percent, which generates approximately $13 million to counties, to a level of 45 percent would restore to local governments the $2.8 million that has been diverted by the legislature to drug court and ignition interlock programs, and would provide an additional $1.2 million that would go into distribution to all 22 counties. This proposal is scheduled for presentation to this committee on October 3. The NMAC has in past years also proposed that the legislature expand the existing local option liquor excise tax so effectively used in McKinley County to all 33 counties.

PROPERTY VALUATION DISCLOSURE — NUMBER THREE COUNTY PRIORITY

Many counties are experiencing a shortfall in road funds. Counties receive these funds from state distribution of gas tax revenues and motor vehicle fees. Over the past 10 years, the amount to distribution of local government, in the case of Chaves County, has averaged an increase of $60,000 a year, while the average operating costs have increased $135,000 per year.

The NMAC supports legislation that would strengthen the existing property valuation disclosure law to ensure adequate provision for real estate sales data to be used in protest hearings. Current law provides confidentiality of disclosed sales price information solely for statistical and analytical purposes but prohibits county assessors from using the affidavits of disclosure in valuation protest hearings. The association believes that recent changes in the disclosure law have greatly assisted county assessors in providing current and correct property valuation numbers to their counties, in support of an adequate property tax base to the county and other entities.

OTHER COUNTY ISSUES

It was recommended that the local option gross receipts tax be streamlined (combined), that a local compensating tax be authorized and that counties be provided assistance with the cost of operating correctional facilities.

Senator Smith requested staff to evaluate the cost of reducing the gross receipts tax to the level of the five percent compensating tax.

STATEWIDE TRANSIT FUND

Jack Valencia, New Mexico Transportation Association, requested that the committee consider providing matching funds so that the state can capture federal transportation money to improve transportation systems for workers in New Mexico.

The benefits of public transportation include:

- mobility for the aging population:
  - the ability to live independently;
  - access to medical and social services;
  - contact with the outside world; and
  - the feeling of belonging to the community;

- mobility for America's small urban and rural communities:
  - regardless of their current economic fortunes, small urban and rural communities often lag behind in adequate public transportation. Nearly two-thirds of all residents in these communities have few if any transportation options; specifically, 41 percent have no access to public transit and 25 percent live in areas with below average services; and
  - the lack of transit options puts low-income families at a disadvantage economically;

- conserving energy and reducing air pollution:
  - public transportation is saving energy and reducing pollution; and
  - per person and per mile, traveling by public transportation uses significantly less energy and produces substantially less pollution than comparable travel by private vehicles;

- essential support for a strong economy:
  - boosts business revenues and profits;
  - creates jobs and expands the labor pool;
  - stimulates development and redevelopment;
  - expands local and state tax revenues and reduces expenditures required for other essential public services; and
  - reduces household and business costs and enhances worker and business productivity;

- critical relief for traffic congestion:
  - protects personal freedom, choice and mobility;
  - enhances access to opportunity;
  - enables economic prosperity; and
  - protects communities and the natural environment; and

- the route to better personal health:
  - improves and protects the personal health of all Americans;
  - ensures better access to essential medical services; and
  - creates opportunities for substantial cost savings in health care delivery.

Mr. Valencia stated that $.02 of the $.28 federal gasoline excise tax is dedicated to public transit. He suggests that New Mexico dedicate part of the growth in the vehicle excise tax to public transit.

Representative Taylor observed that designing successful public transportation in western cities is very difficult because cities are spread out with little concentration of commercial areas.

Representative Silva requested that staff provide a list of dedicated funds.

Speaker Lujan suggested that New Mexico's congressional delegation be urged to remove the matching requirement for federal public transit funds.

TRD LEGISLATIVE PROPOSAL REVIEW

Dr. Tom Clifford, chief economist, TRD, discussed two legislative proposals. One bill, 202.163248.2, would authorize the secretary of taxation and revenue to require electronic reporting. The bill also requires tax preparers of more than 25 personal tax returns to submit the returns electronically. The threshold for required electronic filing of returns is reduced from $25,000 in certain taxes owed in the previous year to $10,000 owed.

The second bill draft, 202.163250.3, enables taxpayers that are reporting taxes on nonhydrocarbon gases and helium to report on forms used for oil and gas return reporting.

Regarding draft 202.163248.2, Representative Gardner asked about the method that TRD proposes to use to determine the timeliness of tax payments. Dr. Clifford stated that he would respond to the committee with a clarification of the language in the draft bill.

Regarding draft 202.163250.3, Representative Bratton asked about the definition of "production unit". Dr. Clifford stated that he would work with Representative Bratton on the definition.

Representative Bratton noted that the legislation provides for TRD to somehow place a value on oil and gas that has been severed but not actually sold. Dr. Clifford stated that TRD has not worked out the details concerning valuation for tax purposes.

Representative Taylor recommended that the proposed legislation narrowly target the language rather than be phrased so broadly that it leads to unintended consequences.

Regarding draft 202.163391.1 presented by Ken Ortiz at the September 11 meeting, Representative Silva asked about Mexican taxes imposed on United States trucks. Dr. Clifford said he would research the Mexican taxes.

TAX POLICY THAT PRODUCES SOCIAL CHANGE

Rob Dickson, vice chair, Governor's Task Force on Our Communities, Our Future, and Debi Lee, city manager, Portales, presented the findings of the task force.

The Governor's Task Force on Our Communities, Our Future is a 27-member, bipartisan body representing all geographic areas of New Mexico and the agricultural, business, civic, government and philanthropic communities.

The first of the recommendations requests that the business improvement district (or BID) law be amended to allow, but not require, the inclusion of multifamily properties, ownerships or rentals into the BID in order to receive BID services but also to be assessed BID taxes. Single- family detached dwellings could not be taxed or included in the BID election.

New Mexico currently has only one BID in downtown Albuquerque. Yet, as redevelopment of main streets and downtowns throughout the state occurs in the coming decades, the BID is a vital revitalization tool for successful infill development. Infill developers estimate that 80 to 90 percent of the square footage in a redevelopment area will be residential with the other 10 to 20 percent being retail, private office or public office. The task force believes it is a mistake, and shortsighted, to exclude by law any possibility that such areas might choose, by public election, to tax themselves for BID services (which are services needed in infill areas in addition to routine public services).

A second task force recommendation requests that the treatment of purchase agreement deposits from buyers of multifamily properties that are under construction be treated equally in the eyes of the law with buyer deposits on single-family detached homes that are under construction. Under current law, builders and buyers of single-family detached homes are free to contract that the buyer's cash deposit is nonrefundable should the builder be in compliance with the contract and the buyer decides to cancel the contract. The freedom to negotiate and enforce such a deposit provision is very important to builders in securing construction financing. It is not clear that builders of multifamily homes are free to contract a similar provision with their buyers. This puts the multifamily builder in the position of having to take higher risks and finding that financing may be more difficult to obtain. Yet, multifamily builders are vital to meeting the housing needs of the state now, and probably even more so in the future. The task force recommends the freedom to contract for nonrefundable deposits in multifamily home construction be clearly stated in the condominium law, putting all residential dwellings on the same legal footing.

Third, the task force recommends that the legislature fund a comprehensive study related to both current and alternative methods of raising revenues for state and local governments, and the impact of tax policy on job creation, growth of average household incomes and the distribution of those incomes, economic development and overall wealth creation in New Mexico. This study should be international in scope, although ultimately it involves what happens in New Mexico.

There is a great deal of discussion, by experts in many fields, of the negative impact on entrepreneurship and job growth of payroll and income taxes, property taxes and sales taxes. In a complementary manner, there is a great deal of discussion about the dependence of the economy and civilization on nonrenewable resources, as well as the long-term effects of treating, from an economic and tax perspective, air, soil and water as "free goods" where business and consumers are passing on current costs, in the form of waste and pollution, to future generations. Over time, moving to a system of taxing waste and pollution in a more economically sound manner, from a free market perspective, by requiring providers and consumers of goods and services to pay their full costs, rather than asking others to pay them, would be better. At the same time, everyone is getting payroll, income, property and sales tax cuts, further stimulating the economy and job creation.

The task force's recommendation is that New Mexico try and bring the best minds in the field to the state to create a study whose published results will be respected for their objectivity, methodology and comprehensiveness.

The task force thinks such a study could put New Mexico in a very positive international spotlight by bringing together the best minds in the world to fully analyze and report on a subject that will continue to garner more and more attention.

It was suggested that taxation of payroll, income and sales is detrimental to economic development. At the same time, use of nonrenewable resources and creating pollution has a cost. The observation was made that it could be beneficial to migrate from certain existing taxes to new taxes on pollution.

Wednesday, September 13

GROSS RECEIPTS TAX DEDUCTION FOR ACTIVITIES OFFICIALS

Gary Tripp, executive director, New Mexico Activities Association (NMAA), and commissioner of officials, presented a request to remove gross receipts taxes from money paid to officiate at high school sports events.

Currently, under Gross Receipts Tax Regulation 3(F):22 of the State of New Mexico Gross Receipts Tax Regulations, athletic officials are required to pay gross receipts tax to the state. The NMAA and New Mexico Officials Association (NMOA) are requesting that the legislature revisit this regulation and consider exempting New Mexico scholastic sporting officials at the high school and junior high/middle school levels and register with the NMAA/NMOA from the requirement of remitting gross receipt tax on the compensation earned for officiating New Mexico scholastic sporting events. The following benefits and points of such an exemption include:

- no funding is lost by the state;
- a reduction of paperwork; and
- a recruiting tool for scholastic sporting officials.

The gross receipts tax has been somewhat of an enigma to school business offices and sports officials throughout the state. The state gives money to schools to pay gross receipts taxes. The schools pay the officials and the officials pay the money back to the state. New Mexico is the only state in the southwest that pays officials gross receipts taxes and requires them to pay gross receipts tax back to the state.

Individuals who choose the avocation of sports officiating are not in it for the money. They are performing a community service for those young men and women who participate in sports in the state. The requirement of gross receipts tax on these individuals has caused a hardship not only for sport officials but for the school business offices responsible for the payment of officials throughout each year. The bottom line is that New Mexico needs to work collaboratively to enhance the educational experience for its youth and sports is one avenue that makes students enjoy their school years. It is incumbent upon government officials to make sure that individuals serving student athletes are given rewards for their service rather than barriers to becoming guardians of the rules of the game.

Senator Smith asked about the possibility of sports officials working through the association instead of working as individuals. It was noted that such an arrangement would constitute an employer-employee relationship and involve withholding taxes, workers' compensation, etc.

Senator Smith suggested that compensation could be structured as per diem instead of as a fee per game officiated.

Senator Smith requested staff to review the two conflicting fiscal impact reports for Senate Bills 135 and SB 571.

Representative Silva asked if the legislature would reduce funding to schools if such a gross receipts tax deduction is implemented. Senator Smith indicated that there would not be a budget cut.

Representative Gardner asked about oversight of the NMAA. Mr. Tripp responded that NMAA ultimately reports to the secretary of public education.

Representative Gardner observed that the Internal Revenue Service might view the relationship between sports officials and the NMAA as an employer-employee relationship because no official may work unless approved by the NMAA.

Representative Whitaker asked if NMAA pays for police protection at sporting events. Mr. Tripp responded that NMAA pays approximately $200,000 per year for police services.

FUNCTIONAL AND ECONOMIC OBSOLESCENCE OF EQUIPMENT AND ASSETS

The TRD's definition of obsolescence derives from the New Mexico Court of Appeals case of *Anaconda Co. v. Property Tax Dept*, 94 N.M. 202, 207, 608 P.2d 514, 519 (N.M. Ct. App. 1979). "Obsolescence is a loss in the service value of a fixed or capital asset which has become useless or inefficient on account of advances in the art, new inventions, inadequacy, the shifting of business centers, the loss of trade or some governmental ruling.".

Obsolescence recognizes a loss in value above and beyond ordinary depreciation. In determining pipeline and equipment value under Section 7-36-27 NMSA 1978 as well as other relevant statutes, depreciation is deducted on a straight-line basis from the tangible property cost of each item of property. The deduction for accumulated depreciation recognizes a continuing decrease in the pipeline's value commensurate with the industry standard for the life of the property. Therefore, a deduction for obsolescence is appropriate only when the taxpayer proves that the property's economic usefulness has expired at a rate exceeding the depreciation already recognized.

A taxpayer has the burden of requesting, proving and quantifying its claim for an obsolescence deduction. A request for an obsolescence deduction must be made at the time the annual report is filed. To support the claim that the usefulness of the property has expired at a rate that exceeds the industry standard for the life expectancy of the property, a taxpayer will need to present verifiable documentation as to the past, present and future plans for the property. Evidence of income shortfall alone is insufficient to establish obsolescence. In rejecting the income shortfall method, the TRD adopts the reasoning of the court in *United Telephone v. Dept. of Revenue*, 307 Ore. 428, 443, 770 P.2d 43, 51 (Sup. Ct. 1989), which held that the mathematical logic of [the income shortfall] approach essentially converts the cost approach to an income approach. Where the income and the rate are given, [the income shortfall] method will always result in a value exactly the same as the income approach because it shoves the cost out the back door. Algebraically, the method cancels all costs in excess of the value indicated by the income approach as obsolescence.

In order to justify an economic obsolescence claim, taxpayers should provide projections of future cash flows at least five years into the future. The taxpayer should also provide documentation of the: (1) "hurdle rate" (the rate by which potential future investments are evaluated); (2) minimum investment performance; and (3) liquidation policy for underperforming investments.

Examples of documentation necessary to support a claim for obsolescence are:

- reserve estimates and projections made at the time the pipeline was planned and prior to construction or acquisition;
- current reserve estimates and projections, including pledged reserves;
- income projections for the pipeline (including assumptions as to throughput, rates, customers, etc.) at the time that the pipeline was planned and prior to construction;
- reports of historical and current income of the pipeline that disaggregates the income from various sources and highlights internal operations rather than averaging costs over the total throughput of the pipeline;
- documentation supporting current income of the pipeline, such as transportation contracts that the taxpayer verifies as encompassing all consideration, terms and conditions of the agreement;
- explanation of how scheduled depreciation will not sufficiently restore the cost of the property before its usefulness is over;
- audited or FASB write downs;
- long-term strategic plans for the property that address the issues of market share, barriers to competitive entry and transportation alternatives; and
- explanation as to why the taxpayer has not sold or written off the asset and what alternatives the taxpayer proposes for performing the function of the asset if sold or abandoned.

Representative Silva asked why TRD is performing pipeline assessments rather than county assessors. Michael O'Melia, deputy director, Property Tax Division, TRD, responded that state law provides that TRD perform certain assessments that cross county lines, which include pipelines, telecommunications, railroads and other common carrier-type assets.

Mr. O'Melia noted that there have been only 11 protests out of more than 460 assessments during the current year.

Senator Smith asked if TRD is taking into account functional and economic obsolescence. Mr. O'Melia said that TRD accounts for both and treats obsolescence as an addition to depreciation.

Curtis Schwartz, an attorney, stated that TRD automatically eliminates an obsolescence deduction when such a deduction is claimed by a taxpayer and TRD gives no explanation and has no published rules.

Representative Gonzales indicated that legislation might be reintroduced to clarify the issue of obsolescence.

Joel Carson, a lobbyist, stated that TRD has an extensive list of rules that explain obsolescence.

Representative Gardner suggested that the TRD does not communicate with taxpayers. Mr. O'Melia noted that TRD issued a position paper to the New Mexico Oil and Gas Association.

Senator. Smith asked what the unsuccessful legislation was designed to accomplish. Mr. O'Melia said that the legislation would have required TRD to be more transparent in its appraisal practices and to communicate better with taxpayers. Senator Smith asked if a law is needed to accomplish those objectives. Mr. O'Melia said that he does not believe a law is needed; however, TRD supports the legislation.

Representative Whitaker asked if TRD has problems appraising electric utilities and other entities. Mr. O'Melia said TRD does not have problems other than pipelines.

Representative Whitaker said that the committee would revisit this issue and requested that the secretary of taxation and revenue appear at the December meeting.

The committee adjourned at 11:00 a.m.

- 23 -

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 7

October 2006
Agenda
Minutes

Revised: October 2, 2006

TENTATIVE AGENDA
for the
FIFTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

October 2-4, 2006
State Capitol, Room 322
Santa Fe

Monday, October 2

9:30 a.m. **Call to Order**
—Representative Donald L. Whitaker, Chair

9:35 a.m. **Coal Surcharge Proposal**
—Justin Jones, Government Relations, BHP-Billiton

10:20 a.m. **Update on State Treasurer's Office**
—Douglas Brown, State Treasurer

10:55 a.m. **Municipal Incentives for Developers of Affordable Housing**
—Lou Baker, Planning Director, Town of Taos

11:40 a.m. **Working Lunch — Municipal League Priority Legislation**
—Bill Fulginiti, New Mexico Municipal League

1:00 p.m. **DWI Local Grant Program Distributions**
—Tasia Young, Legislative Liaison, New Mexico Association of Counties (NMAC)
—Rob Mitchell, Chair, DWI Program Administrators, NMAC

2:15 p.m. **Proposed Legislation — GRT Deduction for Hearing and Vision Aids**
—Representative Daniel P. Silva
—Diane Wood, Lobbyist

3:00 p.m. **Compensating Tax Deduction for Coal-Fired Electrical Plants**
—Richard Minzner, Lobbyist
—Freddy Sanches, Vice President, Sithe Global Power, LLC
—Steve Begay, General Manager, Dine Power Authority

4:00 p.m. **Recess**

Tuesday, October 3

9:00 a.m. **Call to Order — Adopt Minutes**
—Representative Donald L. Whitaker, Chair

9:05 a.m. **Hedging Oil and Gas Revenues**
—Olivia Padilla-Jackson, Director, State Board of Finance
—David Paul, Fiscal Strategies, Inc.
—David Buccholtz, Hyatt, Brownstein and Farber
—Ruth Pan, Goldman, Sachs and Company
—Tim Romer, Goldman, Sachs and Company
—Phil Toews, Goldman, Sachs and Company

10:30 a.m **Motor Vehicle Department Screening for Drug or Alcohol Abuse by Applicants for Commercial Driver's Licenses**
—Vic Sheppard, Managing Director, New Mexico Trucking Association
—Ken Schultz, Legislative Liaison

11:00 a.m. **Abusive Indemnification Agreements with Shippers — Protection for New Mexico Truckers**
—Vic Sheppard, Managing Director, New Mexico Trucking Association
—Ken Schultz, Legislative Liaison

11:30 a.m. **Amendments to Primary Seat Belt Act**
—Vic Sheppard, Managing Director, New Mexico Trucking Association
—Ken Schultz, Legislative Liaison

12:00 noon **Lunch**

1:15 p.m. **Hospital State Gross Receipts Credit**
—New Mexico Private Hospital Association

1:35 p.m. **Taxation and Revenue Department (TRD) Proposed Legislation**
—Jan Goodwin, Secretary of Taxation and Revenue
—Tom Clifford, Chief Economist, TRD

3:30 p.m. **Laboratory Partnership with Small Business Update and Proposal**
—Knoel Savignac, Knoel Savignac Consulting
—Vic Chavez, Manager, Small Business Programs, Sandia National Laboratories
—Marianne Johnston, Los Alamos Community Programs, Los Alamos National Laboratory

4:00 p.m.	**Taxation of Moist Snuff** —James P. O'Neill, Lobbyist
4:30 p.m.	**Recess**

<u>Wednesday, October 4</u>

9:00 a.m.	**Call to Order** —Representative Donald L. Whitaker, Chair
9:05 a.m.	**Horse Racing Regulatory Changes — Legislative Proposal** —Julian Luna, Executive Director, State Racing Commission —Carolyn Monroe, Vice Chair, Gaming Control Board —David Norvell, Member, Gaming Control Board
10:30 a.m.	**Surface Owner Protection Act — Comparison of Approaches** —Caren Cowan, New Mexico Cattlegrowers Association —Gwen Lachelt, Oil and Gas Accountability Act —Bob Gallagher, New Mexico Oil and Gas Association (NMOGA)
11:30 a.m.	**Telecommunications Access Fund** —Thomas J. Dillon, Executive Director, Commission for Deaf and Hard-of-Hearing Persons
12:00 noon	**Lunch**
1:15 p.m.	**Function and Economic Obsolescence Proposed Legislation** —NMOGA —PNM
2:15 p.m.	**Unemployment Insurance Issues and Legislative Proposal** —Representative Mimi Stewart —Conroy Chino, Secretary of Labor
3:30 p.m.	**Adjourn**

MINUTES
of the
FIFTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

October 2-4, 2006
State Capitol, Santa Fe

The fifth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Donald L. Whitaker, chair, at 9:30 a.m. on October 2, 2006 at the State Capitol in Santa Fe.

Present
Rep. Donald L. Whitaker, Chair
Sen. John Arthur Smith, Vice Chair
Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Mark Boitano (10/3-10/4)
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens (10/2-10/3)
Rep. Anna M. Crook
Rep. Keith J. Gardner (10/3-10/4)
Rep. Roberto "Bobby" J. Gonzales
Rep. George J. Hanosh (10/2-10/3)
Rep. Ben Lujan
Sen. William E. Sharer (10/2-10/3)
Rep. Daniel P. Silva (10/2-10/3)
Sen. H. Diane Snyder
Sen. James G. Taylor (10/3)
Rep. Thomas C. Taylor

Absent
Senator Joseph A. Fidel

Designees
Sen. Bernadette M. Sanchez (10/2-10/3)
Rep. Luciano"Lucky" Varela (10/4)

Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Sen. Phil A. Griego
Sen. John T.L. Grubesic
Rep. Irvin Harrison
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Leonard Lee Rawson
Rep. Bill Rehm
Rep. Debbie A. Rodella

Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. Joe M Stell
Rep. Don L. Tripp

(Attendance dates are noted for members not present for the entire meeting.)

Staff
Tim Crawford, Legislative Council Service (LCS)
Cleo Griffith, LCS
Norton Francis, Legislative Finance Committee (LFC)
Pam Ray, LCS
Stephanie Schardin, LFC
Doug Williams, LCS

Guests
The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, October 2

Coal Surcharge Proposal
Justin Jones, government relations, BHP-Billiton, introduced Joe Grenawalt, senior contract analyst, BHP-Billiton, who presented some background on coal production in the Four Corners area of New Mexico.

BHP Navajo Coal Company (BNCC) operates the Navajo Mine, which supplies all coal (up to nine million tons per year) to the Four Corners Power Plant run by the Arizona Public Service Company. San Juan Coal Company (SJCC) operates the San Juan Underground Mine, which supplies all coal (up to seven million tons per year) to the San Juan Generating Station run by Public Service Company of New Mexico (PNM). BHP New Mexico Coal has a workforce of over 950 employees in New Mexico, which is almost three percent of San Juan County's employment.

Approximately 85 percent of the Navajo Mine (BNCC) workforce is Native American. For all of BHP Billiton New Mexico Coal, the workforce is 65 percent Native American. In 2005, BNCC paid $5.4 million in severance taxes and over $16 million in total taxes to the State of New Mexico. BHP Billiton New Mexico Coal paid over $39 million in taxes to the State of New Mexico in 2005.

It was noted that:

- the coal severance tax surtax discriminates against a declining number of long-term coal contracts;

- the electrical generation market is a competitive industry across the western United States;
- the repeal of the severance tax surtax will not significantly impact the New Mexico general fund; and
- removal of the severance tax surtax will maximize utilization of the Four Corners Power Plant.

In summary:

- the coal severance tax surtax clearly discriminates between new coal sales and long-term contract sales. By 2007, the BHP/Four Corners contract will likely be one of the three coal supply agreements subject to severance tax surtax, which will place the BHP Navajo Mine at an unfair disadvantage;
- the electrical generation market, into which all New Mexico coal is sold, is a competitive industry across the western United States;
- the total price of coal, including coal royalties and taxes, makes up nearly 70 percent of coal-fired electrical generation operating costs;
- the repeal of the severance tax surtax will not significantly impact the New Mexico general fund;
- removal of the severance tax surtax will result in a lower coal price to the electric power companies and to consumers, which will maximize utilization of the Four Corners Power Plant; and
- the coal severance tax surtax needs to be repealed.

Representative Taylor suggested that existing coal contracts be terminated and new contracts be developed in order to avoid the surtax. BHP-Billiton noted that current law prohibits such tax avoidance behavior.

Speaker Lujan asked about the impact on state revenue. Mr. Grenawalt stated that the state would forego approximately $4 million annually.

Senator Smith asked about the level of coal production. Mr. Grenawalt stated that Four Corners coal production is between eight and nine million tons per year.

Senator Smith suggested a three- to four-year suspension of the tax in lieu of repeal. BHP-Billiton noted that it prefers repeal of the surtax; however, any tax relief would be appreciated.

Senator Smith requested staff to explore imposition of the surtax on all contracts at a reduced rate in order to achieve revenue neutrality.

Representative Whitaker asked about New Mexico's coal reserves. Mr. Grenawalt stated that the reserves are between two and three billion tons.

Representative Whitaker asked who, ultimately, would benefit from repeal of the surtax and less expensive coal. Mr. Grenawalt responded that reduced costs to the coal-fired electric facility would result. These facilities are owned by utility companies, e.g., PNM, and the reduced cost would ultimately be reflected in reduced cost to consumers through the regulatory rate process.

Update on State Treasurer's Office

Douglas Brown, state treasurer, presented a report on the status of the State Treasurer's Office. He noted that in November 2005, the State Treasurer's Office had more than 5,000 deposits worth $160 million that were not reconciled, had minimal investment procedures and transaction disclosure or transparency and was an unstructured agency with little accountability or few checks and balances. Mr. Brown found that the building and computer security were compromised. He noted that when he arrived, the State Treasurer's Office had unqualified people in key agency positions.

Improvements have been made in both office administration and investment procedures, notably:

- the accounts reconciliation is 100 percent complete through June 30, 2006;
- the agency has been restructured and now there is more accountability;
- the building and computers are secured;
- necessary personnel changes have been made;
- a compliance officer has been added;
- new internal policies have been implemented, including:
    - code of conduct;
    - campaign contributions prohibitions; and
    - whistleblower procedures;
- over 300 revisions to the investment policy;
- over 50 percent reduction in commissions by use of electronic trading platform;
- more competition and transparency on investment trades;
- full disclosure of all investment transactions;
- open meetings of State Treasurer's Investment Committee;
- an expanded broker and dealer list;
- New MexiGROW LGIP is rated AAAm by Standard and Poors;
- the New MexiGROW LGIP yield has increased from 3.2 percent in 2005 to 5.2 percent currently; and
- the general fund monthly earnings from investment of state funds by the state treasurer were $5 million in January 2006 and $12 million in July 2006.

Mr. Brown noted that to improve accountability of the state treasurer, he is recommending that the treasurer be an appointed position. The treasurer might be appointed by the legislature. This would make removal from office much easier than the impeachment process.

New Mexico now has an AAA Local Government Investment Pool rating from Standard & Poors and is one of only 12 states to have such a rating.

Senator Altamirano asked about ongoing safeguards to protect the State Treasurer's Office after the next election. Mr. Brown said that there are no guarantees for the future. Absent constitutional changes, there is no way to compel a future treasurer to continue with current reforms. The only tool currently available is impeachment. Senator Altamirano complimented the treasurer for his use of Hispanic-owned firms.

Representative Gonzales asked about commissions paid by the State Treasurer's Office. Mr. Brown stated that the office does not pay commissions and always purchases investments at the lowest possible price.

Senator Smith asked Mr. Brown about his recommendation for the State Treasurer's Office. Mr. Brown said that he is recommending that the position be appointed. This would allow for requiring certain qualifications of candidates for the office and for greater accountability.

Senator Smith asked if there is a potential impact on local government treasurers if the state treasurer is appointed rather than elected. Bill Fulginiti, representing the New Mexico Municipal League (NMML), stated that local government treasurers are all appointed at this time.

Senator Snyder asked about the qualifications needed to perform the state treasurer's job. Mr. Brown indicated that a candidate for treasurer should be able to demonstrate investment licenses held or experience in supervising an investment office.

Representative Arnold-Jones asked if making the state treasurer's position an appointed one is denying the voter redress at the ballot box. Mr. Brown stated that removal of an appointee would be much more expeditious than the current impeachment process; however, there should be a safeguard against arbitrary removal, e.g., concurrence from the supreme court with an executive branch decision to remove a future treasurer.

Senator Sanchez noted that Michael Montoya is a certified public accountant and would seem to be qualified, but that did not prevent unethical behavior.

Representative Silva asked about the relationship between the State Treasurer's Office and the State Board of Finance (BOF). Mr. Brown stated that, as treasurer, he serves on the BOF and that the State Treasurer's Office is voluntarily submitting to BOF oversight; however, there is no statutory requirement to do so.

Municipal Incentives for Developers of Affordable Housing

Lou Baker, planning director, Town of Taos, explained the need for affordable housing, noting that:

- thriving communities must provide families and individuals with a variety of choices in places to live;
- parents should be able to spend time with their children and community rather than commuting to and from work;
- businesses that have invested in communities deserve support in creating housing policies that help them find and keep qualified workers;
- government leaders have an obligation to plan ahead and look at the big picture, with policies that allow the housing market to meet the needs of community economies;

- building strong communities depends on the ability of people from different backgrounds and points of view to work together;
- children living in a safe home experience fewer health problems than children who live in distressed houses with lead paint and allergy-inducing molds;
- costly foster care placements can be prevented by adequate housing;
- a stable home can dramatically improve a child's performance in school: children in families with housing assistance improved their test scores as much as if their class size had been reduced from 22 to 15 children; and
- an affordable home means greater stability and better employee performance at work and reduced recruitment, retention and training costs for business.

CasaTech, a contractor in Taos, is seeking a tax break in order to provide incentives for the construction of affordable housing.

Ms. Baker promoted the concept of affordable housing so that people who work in Taos can live in Taos and not have to commute from a less expensive community. Specifically, she is seeking a gross receipts tax (GRT) deduction for construction materials.

Representative Gonzales observed that wealthy people moving into places like Taos are forcing long-time local residents out of town.

Senator Smith noted that the Taos school system uses the GRT for bonding purposes. If the GRT revenue is reduced, property taxes will have to go up.

Senator Smith also noted that the Town of Taos is selling its land to a construction company for $12,000. Although it is a reduced rate, the town could gift the land to the contractor in order to reduce construction costs.

Municipal League Priority Legislation

Mr. Fulginiti stated that municipalities and the board of directors of the NMML have expressed concern about the stability and adequacy of municipal revenue sources. To that end, the board extracted from its "policy statement" the following to support major tax initiatives:

- New Mexico municipalities are heavily dependent on the GRT and support legislation that will diversify the sources of revenue available;
- the NMML supports sharing the compensating tax in proportion to the current sharing of GRTs;
- any shifting of tax sharing between the state and municipalities must contain a guarantee that the same revenue levels municipalities derive from current tax policy will be continued. These provisions are called "hold harmless" provisions.

The NMML adopted four tax proposals:

- seek legislative authority for a local option compensating tax; and
- seek municipal tax trade legislation that swaps a distribution of municipal GRT for a distribution of personal income tax that would be returned to the site of residence.

In addition to these tax proposals, the NMML is proposing to:

- support funding for GRIP2 for critical local street, road and bridge projects;
- increase funding for Federal Aviation Administration-funded projects in New Mexico;
- increase the funding for education and training of emergency medical service personnel;
- seek legislation to allow disclosure of tax information pertaining to municipal revenues;
- support state aid for public libraries;
- support funding for regional transit districts; and
- support correcting the Fire Protection Grant Fund.

Mr. Fulginiti noted that, in the beginning, the GRT and compensating tax were intended to be at the same rate. Over the years, the two tax rates have diverged because of multiple local GRT increments that have been authorized for counties and municipalities.

Representative Taylor asked about the impact on small communities of swapping the GRT municipal and county distributions for a personal income tax distribution. Mr. Fulginiti said that the swap is almost dollar-for-dollar in small communities. Roswell, Taos and Rio Rancho benefit from an income tax distribution. No community would lose money because the legislation is drafted to provide that a community receive the greater of a GRT distribution or a personal income tax distribution.

DWI Local Grant Program Distributions

Tasia Young, legislative liaison, New Mexico Association of Counties (NMAC), and Rob Mitchell, chair, DWI program administrators, NMAC, presented a proposal to distribute the liquor excise tax. The redistribution of current liquor excise tax revenue, in contrast to increasing liquor taxes or providing for local options, has been the favored approach during the previous two legislative sessions.

Legislation that would increase the distribution of liquor excise tax revenues to county governments is a NMAC legislative priority for the 2007 legislative session and has received the support of the NMML in previous years.

A variety of legislation relative to the Local DWI Grant Fund has been introduced in recent years, some seeking an increase to 55 percent, some to 60 percent and some incrementally increasing the fund over several years to 100 percent of the liquor excise tax.

Increasing the liquor tax and/or the percentage of alcohol tax revenue transferred to the Local DWI Grant Fund will increase distribution to all 33 counties. Increased funding expands support for a comprehensive approach to DWI, including:

- prevention activities, especially school-based programs;
- enforcement activities that include checkpoints, saturation patrols and more FTEs;
- treatment involving both outpatient services and jail-based treatment;
- alternative sentencing such as alcohol monitoring ankle bracelets, community service programs, alcohol-related teen court and other community custody initiatives;
- alcohol screening involving state-mandated alcohol and drug evaluation screening of all convicted DWI offenders;
- compliance monitoring, meaning tracking, follow-up and supervised probation-type efforts to assist courts and hold offenders accountable;

- alcohol-related domestic violence programs to enhance the safety and emotional well-being of women, men, children and their families;
- detoxification programs to be located in Bernalillo, Rio Arriba, Sandoval, San Juan, Santa Fe and Socorro counties;
- coordination, planning and evaluation with coordinators at the county level who oversee DWI project efforts, monitor grant activities, plan funding requests and ensure implementation of the state-mandated offender profile and tracking system;
- how increased funding to local programs provides resources to communities that know both the gaps in DWI services and the unique needs of their county; and
- how funding local programs encourages a comprehensive, integrated, multifaceted, needs-based approach to the complex issue of DWI.

Senator Cravens asked for an explanation of how the $600,000 budgeted for administration of the DWI program is spent. Vicky Evans, Department of Finance and Administration (DFA), said that the $600,000 represents less than five percent of total program expenditures and pays for seven staff and equipment at the state level. The $600,000 represents a statewide expenditure.

Representative Taylor expressed concern that the state is profiting from the DWI administrative funding.

Senator Smith noted that a transfer of part of the DWI funds to drug courts several years ago took funds out of the DWI programs. He noted that diversion of funds was necessary because there was limited funding that year. At the time, there was a concern that the drug court programs needed funding to become established. Now there should be a discussion about funding drug courts from the general fund and restoring those lost funds to the DWI programs. The theory of the DWI funding is that if the programs work as they are hoped to, the need for the funding will decrease over time.

Representative Crook asked how offenders pay for their interlock devices. Ms. Evans replied that many offenders access the Interlock Device Fund to pay for their interlock devices. She also noted that the liquor excise tax receipts are about $42 million per year. She reiterated that both liquor excise tax and GRT are paid on a purchase of alcoholic beverages.

Representative Gonzales suggested that the DFA update the pamphlet that describes the Local DWI Grant Fund and its distributions.

Representative Silva asked if any of the $1.4 million increase in funding that is being requested for Bernalillo County can be used to operate jails. Kevin Kenzie, DWI program coordinator, Bernalillo County, explained that no DWI funds are used to operate jails.

Speaker Lujan suggested that the money that was diverted to other programs be restored so that the DWI programs can operate as they were developed. He thought an increase of $4.5 million would be needed to make up for lost funds.

Proposed Legislation — GRT Deduction for Hearing and Vision Aids

Diane Wood, lobbyist, discussed a proposal to provide GRT deductions on equipment and services associated with providing hearing aids and vision aids. Hearing impairment is the number one birth defect in the United States. The impact of untreated hearing loss is quantified to be $122 billion annually in lost wages. The 2006 cost for a hearing aid, accessories and related professional services is estimated at $3,000 per hearing aid. New Mexico insurance companies typically do not cover hearing aids. Medicaid provides a small amount of coverage. Children with a mild uncorrected hearing loss, even in only one ear, have been found to miss 25 percent to 50 percent of classroom speech. They are more likely to be held back at least one grade compared to children with normal hearing. A child who is not identified or treated early for hearing loss costs taxpayers an additional $420,000 for special education and approximately $1 million over a lifetime.

Types of hearing loss:

- sensorineural hearing loss (or nerve-related deafness) involves damage to the inner ear caused by aging, prenatal and birth-related problems, viral and bacterial infections, heredity, trauma, exposure to loud noise, fluid backup or a benign tumor in the inner ear. Almost all sensorineural hearing loss can be effectively treated with hearing aids;
- conductive hearing loss involves the outer and middle ear that may be caused by blockage of wax, punctured eardrum, birth defects, ear infection or heredity, and often can be effectively treated medically or surgically;
- mixed hearing loss refers to a combination of conductive and sensorineural loss and means that a problem occurs in both the outer or middle and the inner ear; and
- central hearing loss results from damage or impairment to the nerves or nuclei of the central nervous system, either in the pathways to the brain or in the brain itself.

Untreated hearing loss results in:

- educational dropouts;
- employment barriers;
- family discord;
- increased dependency on the welfare system;
- isolation;
- physical and mental health problems; and
- loss of independence.

The following organizations support hearing aid insurance legislation:

- New Mexico Commission for Deaf and Hard-of-Hearing Persons;
- New Mexico Commission for the Blind;
- New Mexico School for the Deaf;
- Albuquerque-Area Indian Health Board;
- Hearing Loss Association of Albuquerque;
- New Mexico Hands and Voices;
- Newborn Hearing Screening Advisory Council;
- New Mexico Speech and Hearing Association;
- Parents Reaching Out (PRO); and
- Presbyterian Ear Institute.

Compensating Tax Deduction for Coal-Fired Electrical Plants

Richard Minzner, lobbyist, and Freddy Sanches, vice president, Sithe Global Power, LLC, presented a compensating tax credit in an amount equal to possessory interest, business activity and ad valorem tax paid by the Desert Rock Energy Project to the Navajo Nation.

With respect to the Desert Rock Energy Project, there are employment, tax revenue and economic development benefits, summarized as follows.

The benefits of construction jobs that will be created will be that:

- many skilled, well-paying jobs will be available;
- job training will be provided;
- the total wages are expected to exceed $550 million; and
- the multiplier effect will generate additional jobs with total wages of approximately $330 million.

Long-term jobs that will be created will benefit the community as follows:

- approximately 200 jobs will be at the power plants;
- approximately 200 jobs will be at the mine;
- additional managerial, supervisory and skilled positions will be created;
- annual wages will be $16 million; and
- the multiplier effect will generate additional jobs and total wages of approximately $25 million per year.

The following tax revenue will be realized because of the plant:

- of the approximately $350 million from construction through the first 25 years of operations, $260 million will be state revenues and $90 million will be San Juan County revenues;
- corporate income tax will be approximately $250 million from construction through the first 25 years of operation; and
- New Mexico compensating tax will be approximately $10 million from construction through the first 25 years of operation.

Other ways that the plant will increase economic growth in the area are expected to be:

- that annual new expenditures for water supply, land leases and coal royalties will total more than $50 million per year;
- a reduced Navajo Nation unemployment rate;
- the Navajo-owned businesses will receive first priority for contracts; and
- that the plant will spend approximately $20 million per year for maintenance, largely benefiting local businesses.

The committee recessed at 3:18 p.m.

<u>Tuesday, October 3</u>

Representative Whitaker reconvened the meeting at 9:10 a.m.

Hedging Oil and Gas Revenues

Olivia Padilla-Jackson, director, BOF, was accompanied by David Buchholtz, attorney, Hyatt, Brownstein and Farber, and Ruth Pan and Phil Toews, Goldman, Sachs and Company. Ms. Padilla-Jackson provided an introduction and overview.

Ms. Padilla-Jackson made the following points:

- natural resource pricing and production affects state revenues across all state funds and:
  - the state is positioned in the market as a commodity producer;
  - high oil and natural gas prices have greatly benefited the state; and
  - strong prices have lifted revenues, reserves and capital investment for the last several years;

- the state is vulnerable to price swings in natural resource markets and:
  - unanticipated price **declines** can threaten general fund spending;
  - unanticipated price **declines** will impact state reserves; and
  - unanticipated price **declines** will reduce funds available for capital projects;

- commodity price hedging can protect the state from a drop in commodity prices and could provide the following benefits:
  - a rolling "put" program implemented during selected market periods and based upon clear and prudent policy goals can provide **protection against decline** in prices; and
  - authorization of a pilot program can enable the state to begin to develop capacity to more effectively manage its commodity price risk;

- hedging risks can be significant and can be categorized as follows:
  - a "basis risk" is the risk of pricing of hedges based on national price benchmarks that may not track prices realized by New Mexico producers; use of local price benchmarks is an option but reduces price transparency;
  - a "market risk" occurs when "put" contracts, once purchased, inherently move in value as the underlying commodity price index moves; and
  - a "counterparty risk" can be managed as in the case of interest rate swaps through collateralization;

- hedge product advantages and disadvantages to be aware of:
  - "swaps" can lock in firm future commodity price levels and sustain revenues on production hedges based on a reference price, **but can lose benefits of the market as prices increase or move to the upside**;
  - "collars" can be used through the sale of a "call" option that fund the purchase of "puts" to create **downside protection**; the benefit is that a collar pays for the cost of the "put" contract premium, **but the state gives away the upside price appreciation above the collar ceiling**; and
  - floors: "put" contracts **provide downside price protection** on production volume hedged **while leaving the state with upside price potential**, but **require payment of up-front premium**.

- starting on a small scale can be a prudent approach to managing commodity price risk that has wreaked havoc on the general fund during prior years; and
- the benefits derived from hedging can be protection against falling commodity prices; however, most products will cause loss of benefits if the price of the commodity rises.

Ms. Pan, Mr. Toews and Mr. Buchholtz continued the presentation.

The state has benefited from the substantial increase in commodity prices in the past few years. The commodity production tax revenues that the state receives are a function of both production volumes and commodity prices. Though future production volumes cannot be guaranteed, instruments exist to protect against declining commodity prices. In FY 2006, the fourth largest revenue contributor behind sales tax, income tax and federal mining leasing rents was oil and gas production taxes. The oil and gas emergency school taxes contributed over $491 million to the state's general fund in FY 2006. The state's severance tax bonding (STB) program is supported primarily by the oil and gas severance taxes. The oil and gas severance taxes contributed over $477 million to the state's Severance Tax Bonding Fund in FY 2006. An energy price risk management (PRM) program provides insurance against lower energy prices in the future.

Managing energy exposure comes in many forms, but the simplest hedging strategy, "put" buying, allows the state to lock in a minimum commodity price level for a certain cost (a "put strike") and, **by paying a "put" premium like an insurance premium, the state fully participates in market increases above the "put strike".**

- The primary advantage of a PRM program is the ability to plan and protect revenue. With more predictable revenues, capital can be appropriately allocated to priority projects.
- Natural gas- and oil-producing sovereign entities have begun to actively manage their commodity exposure by using the products available in over-the-counter markets.
- Producing sovereign entities can use minimum price protection strategies to minimize the impact of volatile revenues. This further prevents potential budget shortfalls and would allow for increased revenues when commodity prices are high.
- The tenor and liquidity of commodity PRM transactions have increased over the past few years. For example, volumes on the NYMEX have doubled over the last five years.
- A well-thought-out PRM program will not increase the state's risk; rather, it manages and mitigates current risk exposure.

Goldman Sachs recommends:

- in consideration of authorizing a PRM program and establishing parameters and criteria to execute when market conditions warrant;
- setting an ongoing PRM budget;
- purchasing put-based price protection over time, based on market cycles and targets;
- establishing criteria against which a program will be evaluated over time, updated regularly in light of current market conditions;
- using "windfall" revenues in good years to fund a program and buy protection for the future; and

- viewing a PRM program as an insurance program and part of the state's overall risk management.

Representative Arnold-Jones observed that hedging is perceived as risky and asked for a rationale that might be used when explaining hedging to constituents. Mr. Toews compared hedging to an insurance policy for which the state pays a premium and is guaranteed not to lose revenue if the commodity price drops below a predetermined floor.

Representative Gardner compared the state general fund reserve to a bond in lieu of conventional automobile insurance. Therefore, if the state already has a bond, why should the state purchase insurance? Ms. Padilla-Jackson responded that the reserves are intended as a rainy day fund and that hedging is an additional protection.

Representative Taylor asked about the amount of money that is proposed to be subject to hedging. Ms. Padilla-Jackson noted that the draft legislation would hedge 50 percent of the general fund revenue derived from natural gas, which would equal approximately $150 million.

Representative Taylor asked about the premium associated with a put. Mr. Toews said that the cost depends upon market timing, but can range from $15 million to $45 million.

Speaker Lujan asked if a request for proposals would be issued for a fund manager if the legislature authorized hedging. Ms. Padilla-Jackson responded that the BOF would consult with the State Investment Council (SIC) to determine if external or internal management would be pursued.

Speaker Lujan asked about the nature of the pilot program proposed by BOF. Ms. Padilla-Jackson said that the percentage limitation contained in the draft legislation constitutes the limitations of the pilot program.

Speaker Lujan suggested that the committee review draft legislation at the December meeting.

Representative Arnold-Jones asked what was in this for Goldman Sachs. Mr. Toews estimated that Goldman Sachs would earn $500,000. The money would be earned by taking the insurance contract sold to New Mexico and breaking it down into its component parts and trading the parts in the marketplace.

Ms. Pan noted that Texas and Louisiana have enacted legislation enabling oil and gas hedging. Alaska and Oklahoma are considering such legislation.

Motor Vehicle Department Screening for Drug or Alcohol Abuse by Applicants for Commercial Driver's Licenses

Ken Schultz, lobbyist for the New Mexico Trucking Association (NMTA), began the discussion of issues for which he and Vic Sheppard, managing director, NMTA, were bringing before the committee in the bills they are proposing.

It is an increasingly difficult task for companies attempting to hire commercial driver's license (CDL) holders to check whether or not the individual has had a positive drug or alcohol test result. Under state and federal law, a company is mandated to check backgrounds to ascertain if a prospective employee has ever tested positive. If the outcome is positive, that does not necessarily mean a company cannot hire that individual. However, the driver must have taken or must take certain steps to make the driver eligible for hire. For instance, the driver must have met with a substance abuse professional and had an evaluation and at least one educational session. The driver must then take a return-to-duty substance test that must come back negative; at this point, the individual may be hired as a driver. The individual concerned is then subject to at least six random drug and/or alcohol tests within the next 12 months.

The industry is experiencing a chronic shortage of qualified drivers. Drivers who have had a problem with test results will sometimes fail to list companies that they have worked for within the past three years. It could take anywhere from 30 to 40 days to establish if the prospective employee has worked for any particular company that must then be contacted and queried regarding the driver's background with regard to drug and alcohol testing. In the meantime, the company that has the CDL driver has considerable liability and the motoring public may be endangered.

The medical review officer, a qualified medical doctor who makes the determination of whether a driver is positive or not under Department of Transportation regulations, would be responsible for reporting positive results to the New Mexico Motor Vehicle Division.

The object of the legislation is to report a positive drug or alcohol test relating to CDL holders to the Motor Vehicle Division.

Senator Cisneros asked if all employees of a trucking company would be subject to the proposed legislation. Mr. Sheppard responded that only CDL holders who are likely to drive a vehicle that requires a CDL license within the calendar year would be subject to reporting.

Abusive Indemnification Agreements with Shippers — Protection for New Mexico Truckers

Mr. Sheppard discussed the second issue of concern to the NMTA. The object of the proposed legislation is to hold shippers accountable for liability in the event of an accident. This is particularly applicable to shipment of hazardous materials with respect to the shipper notifying the truck driver of the contents of the shipment and providing the proper paperwork and placards. The effect is that the driver of the truck would continue to be responsible for the driver's own actions, but the shipper would also be accountable for the shipper's actions, including any omissions; no document signed by the truck driver would indemnify the shipper from responsibility.

Amendments to Primary Seat Belt Act

Mr. Schultz and Mr. Sheppard continued discussing their proposals. The objective of the third bill is to allow the failure to use seat belts or child restraints to be used in civil lawsuits to allocate fault when determining damages.

Hospital State GRT Credit

Dan Weeks, New Mexico Private Hospital Association, and Cindy West, also lobbying for the New Mexico Private Hospital Association, discussed a legislative proposal that was introduced in the 2006 session but was unable to gain full passage. The objective of the proposed legislation is to reduce the GRT burden on investor-owned hospitals in New Mexico and make the tax system as it pertains to hospitals more equitable. In addition, the reduction of the GRT will lower health care costs and allow hospitals to provide greater services to communities and their patients.

New Mexico's tax structure relative to health care providers is somewhat unique and inequitable. Insofar as hospitals are concerned, there is no GRT imposed on nonprofit hospitals organized as 501(c)(3) organizations and governmental hospitals. Investor-owned or for-profit hospitals were subject to the full GRT until the early 1990s, at which time the legislature enacted a bill that reduced the effective rate of the GRT on investor-owned hospitals by 50 percent. Since that time, several bills have been proposed to eliminate or reduce the GRT on investor-owned hospitals. Unfortunately, these bill have not made it completely through the legislative process in spite of broad-based support. Last year, the legislation was included in the omnibus tax bill that did not pass the senate.

Having a GRT on investor-owned hospitals in New Mexico creates an economic disadvantage for those hospitals, especially when compared to out-of-state hospitals. Many of the investor-owned hospitals are located in border areas, such as Las Cruces, Hobbs and Carlsbad. Others are either sole community providers that provide significant amounts of uncompensated care to patients in their communities or specialty facilities providing essential behavioral/psychiatric and rehabilitation services.

In the past few years, there have been several New Mexico hospitals that have converted from nonprofit or governmental status to investor-owned. These companies have brought needed access to capital and invested heavily in these New Mexico hospitals, thus improving and enhancing services available to patients and providing economic development throughout the state.

The proposed bill addresses only the state portion of the GRT. The rationale for including only the state portion and retaining the local portion is that the economic impact on local government budgets resulting from the complete elimination of the tax would be significant in the affected communities. In addition, counties also fund local indigent funds from local option GRT increments. The proposed legislation was introduced in the 2006 session and it was combined with other bills in the omnibus tax bill, which did not pass. The legislation would provide relief from the state portion of the GRT, not the local portion. The estimated impact on the general fund is a loss of $7 million.

Senator Snyder asked about the local GRT. Ms. West stated that local government would be held harmless with the proposed legislation.

Senator Cravens requested committee consideration for expanding the medical GRT deduction to dentistry.

TRD Proposed Legislation

Libby Gonzalez, Taxation and Revenue Department (TRD), and Philip Salazar discussed a bill making some changes to the Cigarette Tax Act.

Changes to the Cigarette Tax Act include:

- modification of the definition of "cigarette" to conform with the federal definition to separate small cigars from cigarettes;
- allowing small cigars to be taxed as cigarettes;
- clarification of the tribal cigarette tax exemption;
- clarification of which cigarettes require a New Mexico tax stamp;
- allowing a retailer or distributor to redeem seized cigarettes;
- extending the time period before seized contraband cigarettes will be destroyed; and
- clarifies that the burden of proof to demonstrate fraud is on the TRD.

Speaker Lujan suggested that cigars should be taxed separately from cigarettes.

Representative Whitaker suggested that the proposed legislation needs redrafting, especially the clarification between small cigars and cigarettes.

In a second bill, the TRD proposes to require certain employers to file electronic returns with respect to income tax and workmens' compensation. This is a joint project with the Labor Department and Workmens' Compensation Administration.

Hoyt Pattison noted that section 2 of the proposed legislation would apply to any employer having even one employee.

Representative Gardner observed that the proposed legislation shifts the burden of work from state government to the private sector. He questioned the need for legislation that mandates behavior that already makes sense for any business.

Senator Snyder stated that the purpose of the legislation is to create sharing of information with three agencies and that she has personal knowledge of inappropriate information sharing.

Mr. Salazar noted that TRD is trying to gather information electronically, through one medium, to avoid data entry errors and improve timeliness of processing returns.

Laboratory Partnership with Small Business Tax Credit Act Update and Proposal

Knoel Savignac, Knoel Savignac Consulting, and Vic Chavez, small business programs, Sandia National Laboratories, and Marianne Johnston, Los Alamos community programs, Los Alamos National Laboratory (LANL), discussed proposed changes to the Laboratory Partnership with Small Business Tax Credit Act that would increase the amount of the tax credit permitted to national laboratories, now that LANL is also a taxpayer.

One example of the success of the partnership is "healthy buildings". The partnership funded a feasibility study that has been instrumental in helping raise $2 million in start-up capital. The company proposes to use wood chips to heat buildings. A second example is a start-up business that is experimenting with development of a simple, inexpensive radiation detector that can be used to identify cargo containers that contain illicit radioactive materials. The small business partnership has enabled the company to move beyond the trial and error stage to true scientific experimentation.

Representative Taylor asked about the amount of tax credits currently being used. Mr. Chavez stated that currently $2.8 million is being claimed each year.

Speaker Lujan noted that it was the federal government that awarded the LANL contract to a for-profit company and did not provide an increase in the contract that would compensate the company for the GRT liability due to the state of New Mexico. He suggested that the New Mexico congressional delegation should be encouraged to seek additional federal funding for LANL.

Representative Gardner asked about how a start-up company can obtain assistance through the small business partnership. Mr. Chavez indicated that the company should just call.

Wednesday, October 4

Horse Racing Regulatory Changes — Legislative Proposal

Julian Luna, executive director, State Racing Commission, Carolyn Monroe, vice chair, Gaming Control Board, and David Norvell, member, Gaming Control Board, presented the revised language in the Horse Racing Act to reduce the micromanagement of the State Racing Commission in the business decisions of the concessionaires who sell food and goods at horse racetracks in New Mexico. The primary purpose of the proposed legislation is to modernize the Horse Racing Act and to reorganize it in a manner that is simple to follow and easy to understand.

The proposed bill places items in the Horse Racing Act in an orderly manner. The proposal does substantially reorganize the act, but in many cases the language is not substantially modified. For example, the proposal places the title and definitions section at the beginning of the act, instead of in the middle or near the end as is the case currently. The bill groups all licensing functions in one area, all taxes and fee provisions in one area and all criminal penalties in another area. See the attached reference table showing where existing provisions are now located in the proposal and a reverse table reflecting where the provisions used in the proposed legislation are in the current act.

The bill also removes archaic and inconsistent language. The proposal is gender-neutral. The terms "state racing commission", "racing commission" and "commission" are used interchangeably throughout the act. This proposal consistently uses the term "commission" to refer to the "State Racing Commission".

This proposal does make a number of substantive changes that are explained in more detail below. An example of a substantive change is that this bill removes the racetracks' ability to hire "special police officer", it inserts a fee range for initial and renewal applications, it categorizes the different types of licenses and realigns background requirements, it adds a general criminal penalty for the violation of the act and it increases the civil penalties from $5,000 to not in excess of $10,000.

In addition, the bill attempts to simplify the taxation and fees provisions of the act. Currently, the financial provisions are scattered among five different provisions of the act and are difficult to understand, keep track of and distribute appropriately. Since there are different percentages and financial requirements based upon designations of a track as a class A or class B racetrack, the financial information and requirements are now arranged accordingly. In other words, all financial obligations and requirements for class A racetracks can be located under one section and all requirements for class B racetracks in another.

The bill attempts to streamline the licensing process. Different types of licenses that are addressed in the bill are racetrack license, secondary license and occupational license. A racetrack license is a license that allows a person to conduct horse races. Secondary licenses are licenses given only to officers, directors, shareholders, lenders or holders of evidence of indebtedness of a corporation and all persons having any direct or indirect interest therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory, in the conduct of the racetrack. An occupational license is for those actually involved with horses, e.g., trainers, owners of horses, jockeys or those providing services at the track, such as concessionaires. In addition, the background requirements have been arranged according to the type of license.

The bill also transfers some limited responsibilities to the Gaming Control Board. The bill transfers the duty of conducting background investigations of licensees to the Gaming Control Board. This transfer avoids some duplication of services between the State Racing Commission and the Gaming Control Board. It also allows the State Racing Commission to focus on racing issues and places the background investigations in the hands of the Gaming Control Board, which has a staff of fully certified peace officers and licensing specialists.

Breeders and horsemen support the proposed legislation. Racetracks do not seem to be interested in seeing the changes implemented. Senator Smith commented that the joint powers agreement now in use between the Gaming Control Board and the State Racing Commission is inappropriate because legislative action is required before a change in duties and responsibilities of either the commission or the board can take place.

Representative Varela feels that the proposed legislation is nothing more than ratification of the joint powers agreement. He is not happy with reorganizations that occur without legislative consent.

Senator Altamirano applauded the proactive position taken by the commission and the board in executing the joint powers agreement. He noted that the ultimate decision rests with the legislature, but if the legislature approves, the cooperation between the boards is already in place.

Representative Taylor asked if the proposed legislation addresses the composition of the board and the commission. Mr. Norvell said that it does not. The legislation is basic cleanup of the original racing act combined with ratification of the joint powers agreement. It does not restrict commission members who own horses from racing their horses, nor does it remove the chair of the commission from being an ex-officio member of the board.

Senator Snyder stated that she is disappointed that the handouts were not provided prior to the meeting.

Senator Snyder wants an explanation of all the sections of law that are being repealed in the proposed legislations. Ms. Ray stated that the repealed sections refer to the original 1936 act and that there are few sections that do not appear in the revised bill.

Representative Arnold-Jones is nervous about the ambiguous fee language contained in the proposed legislation. She also asked about the legality of two separate boards executing a joint powers agreement. Mr. Norvell noted that there is a joint powers agreement in statute and the agencies acted pursuant to the authorization in that act. Representative Arnold-Jones requested staff to research the issue of authority of two state agencies to enter into joint powers agreements.

Surface Owner Protection Act — Comparison of Approaches

Representative Andy Nunez, Eric Jantz, Environmental Law Center, and Caren Cowan, New Mexico Cattlegrowers Association, presented their version of the Surface Owner Protection Act. Deborah Seligman, lobbyist, New Mexico Oil and Gas Association (NMOGA), was present to provide information about the version NMOGA is promoting.

Oil and gas companies in New Mexico are not required to have a written agreement with a rancher or homeowner before they drill an oil or gas well, nor are they required to pay for the use of the land surface. With the greatly increased pace of oil and gas production since 2000, more than 2,100 new wells per year are being permitted in New Mexico. The relationship between the oil and gas industry and surface owners has become more out of balance. Eleven states, including Wyoming, already have laws that require oil and gas companies to give notice and negotiate damage settlements with surface owners.

The notice provisions of the cattlegrowers' bill requires:

- five days' written notice for nonsurface-disturbing activity, and 40 days' notice for surface-disturbing activity;
- operators to describe the proposed operations so that the surface owner can evaluate the effects of the operations on the surface owner's property;
- operators to propose a surface use and compensation agreement that addresses the timing, location and scope of operations and an offer of compensation;
- certain elements to be included in the offer of compensation; and
- that a surface owner respond within 20 days to accept, negotiate changes to or reject the agreement and offer.

If no agreement can be reached, the proposed legislation allows the operator to post a bond of at least $25,000 with the Oil Conservation Division of the Energy, Minerals and Natural Resources Department and then begin operations. Operators are required to compensate the surface owner for the use of and any damages to the surface. A surface owner may bring an action for damages against the bond if there is no surface use agreement or the operations are outside the scope of an existing agreement. Penalties are allowed if a court finds that no notice was provided, a bond was not posted, the bond amount was not estimated in good faith, or the oil and gas operations are outside the scope of an agreement and the operator had reason to know they would be so. The legislation provides a six-year statute of limitations for claims under the act.

Representative Arnold-Jones asked why the parties cannot agree. Ms. Seligman responded that one of the major issues is the insistence on payment for "use" of the surface land to exercise the mineral rights. The NMOGA believes that because it owns the rights, it does not have to pay for use of the land. Also, NMOGA objects to a $25,000 bond per well and believes that $2,500 is sufficient.

Senator Snyder does not know how someone can prove what land used to look like. She believes that the real issue at hand is money.

Senator Smith asked what impact the proposed legislation would have on lease rates for grazing on state land. It was noted that the state land commissioner has a formula for lease rates.

Representative Gardner noted that the proposed legislation changes hundreds of years of case law by adding new restrictions on the owners of mineral rights. Further, he believes that it would be cost-prohibitive to restore land to its original condition.

Telecommunications Access Fund

Thomas J. Dillon, executive director, Commission for Deaf and Hard-of-Hearing Persons, discussed the Telecommunications Access Act (Sections 63-9F-1 through 63-9F-13 NMSA 1978), stating that it was enacted by Laws 1993, Chapter 54 to comply with the provisions of the federal Americans with Disabilities Act of 1990 and it addresses the need to provide telecommunications access to many New Mexicans who are hearing- or speech-impaired and are unable to use traditional telecommunications equipment and services without assistance.

The Telecommunications Access Fund (TAF) provides the revenues for the budget of the New Mexico Commission for Deaf and Hard-of-Hearing Persons. The surcharge is thirty-three hundredths percent imposed on the gross amount paid by customers for intrastate telephone services provided in this state and intrastate mobile telecommunications services that originated and terminated in the same state, regardless of where the mobile telecommunications service originated. Mr. Dillon expressed concern that this revenue stream would decrease as use of internet telecommunications increases, thus limiting services that could be provided by the commission.

Telecommunications relay services allow deaf, hard-of-hearing and speech-impaired New Mexicans access to telephonic communication with the general population and vice versa. Deaf, hard-of-hearing and speech-impaired. New Mexicans are able to place and receive calls to independently function in their daily lives and communicate through the telephone with the general population. Telecommunications relay services are available 24 hours a day, seven days a week. In FY 2006, the New Mexico relay network averaged over 11,600 inbound New Mexico calls per month and approximately 55,000 billable minutes per month.

All New Mexicans are able to access the New Mexico relay network through a variety of means depending upon their disability or lack of disability. The general population is simply allowed to call 711 and place a telephone call with the assistance of an operator to a deaf or hard-of-hearing individual. Deaf and hard-of-hearing individuals who can speak can use their own voice when calling the relay service to place a call. Speech-impaired or deaf individuals who are unable to speak can call the relay through a telecommunications device for the deaf (TTY) and type their conversation to the relay communication agent through the TTY.

Captioned telephone (CapTel) is a technology that offers more seamless communication for those who cannot hear but are able to speak on the telephone. There are approximately 190,000 residents of New Mexico that could benefit from this technology. Three hundred CapTel telephones were distributed during FY 2006 at no cost to customers throughout the state. Each CapTel telephone currently costs the state $350. During FY 2006, 240,000 conversation minutes occurred in New Mexico by CapTel users. New Mexicans do have the option of purchasing a CapTel telephone for their home or business and can use the service through the New Mexico relay network.

Video relay services (VRS) are also available in New Mexico for deaf residents who use sign language. There are approximately 7,000 to 10,000 such New Mexicans. VRS are accessed through a modem via a telephone or a television where the deaf resident signs the conversation to the operator, who in turn places the call. VRS are not currently paid for by the state but rather reimbursed by the National Exchange Carriers Association (NECA) Fund under the Federal Communications Commission (FCC). It is expected that within two to three years the FCC will require that intrastate VRS be paid for by a state. The current mandatory reimbursement rate is approximately $7.00 per minute. The current annual average minutes from New Mexicans using this service are approximately 80,811 minutes per year. NECA reimbursed the video relay providers $565,677. This will have a financial impact on the fund per year when the FCC requires the state to pay for this service. VRS demands will continue to grow.

The state is geographically huge and mostly rural. Another technology that the state is currently looking at is video relay interpreting. Video relay interpreting will allow New Mexico to provide interpreting services all over the state from a central location through a television or computer via the internet. This technology will allow the purchase of interpreting time in smaller increments than is now available and will reduce the travel time that interpreters must spend to serve rural New Mexico. Taking full advantage of communications technology with products and services such as CapTel telephones and video relay interpreting, respectively, is the most effective way to satisfy the communications needs of deaf and hard-of-hearing individuals across the state. With the provision of communications technology, the state can grow its economy by reducing communication barriers for deaf and hard-of-hearing citizens.

The state is currently certified to provide relay services through June 30, 2008 by the FCC. The recertification filings have always been filed with the FCC by the Commission for Deaf and Hard-of-Hearing Persons on behalf of the state. The Commission for Deaf and Hard-of-Hearing Persons has also filed the annual complaint log on June 30 of each year with the FCC.

Voice-over-internet protocol is threatening to reduce revenue to the fund.

Representative Whitaker suggested that the commission advise the Public Regulation Commission as to the potential revenue issues.

Function and Economic Obsolescence Proposed Legislation

Ms. Seligman, Curtis Schwartz, attorney for NMOGA, Art Hull, governmental affairs, PNM, and Gail Haney, PNM, discussed the need for legislation on functional and economic obsolescence. The challenges concerning economic obsolescence are:

- existing statute allows for functional and economic obsolescence for the electric utility industry;
- for the past three years, the TRD allowed the use of unit rule appraisal methodology;
- TRD now says this methodology is not specifically permitted in statute; and
- existing statute specifically permits that same methodology for telecommunications and railroad industries.

PNM's recommended solution is to codify unit rule appraisal methodology used for the past three years similar to telecommunications and railroad industries, which was provided in House Bill 276, sponsored by Representative Silva, that unanimously passed the house in 2006 but ran out of time at the end of the session.

The proposed PNM legislation would:

- provide taxpayer ability to elect unit rule appraisal methodology;
- define economic and functional obsolescence; and
- once the methodology is elected, require approval of the secretary of taxation and revenue to change methodology.

Representative Taylor asked if PNM would pay less in property taxes with the proposed legislation. It was noted that PNM is already using the valuation method set forth in the proposed legislation and it will not pay less. The legislation would help prevent a tax increase.

Unemployment Insurance Issues and Legislative Proposal

Conroy Chino, secretary of labor, Lala Garcia, Labor Department, Marilyn Hill, deputy secretary, Labor Department, and Mike Sanchez, director, Administrative Services Division, Labor Department, spoke on a legislative proposal to create a state unemployment insurance (UI) trust fund that would act as a reserve fund for the federal UI trust fund. The state trust fund would have a principal balance of $150 million and would be created over a three-and-one-half-year period. Money in the fund would be generated from a temporary contribution imposed by the state to be paid by employers when they pay their SUTA contributions. Concurrently, the state would proportionately decrease the rate of SUTA contributions so that, even with the addition of the state fund contribution, employers will continue to pay the same total amount to the state. At the conclusion of the three-and-one-half-year period, the state contribution would cease and the SUTA contribution rates would revert to the standard schedules.

The $150 million principal balance in the state trust fund would be used only to pay unemployment insurance benefits to claimants. However, the interest earned on the fund would be used to support the administrative functions of the UI program and other innovative efforts of the Labor Department. These funds would be appropriated annually through the legislative budgeting process. The federal UI trust fund and interest earned thereon would continue to be used to pay benefits to claimants.

Because the principal balance and earned interest in the federal UI trust fund can only be used to pay benefits to claimants, the creation of the state UI trust fund creates an innovative funding stream for the Labor Department and frees up money that would otherwise sit in an already healthy federal trust fund.

Taxation of Moist Snuff

James P. O'Neill, lobbyist, U.S. Tobacco, and Philip Larragoite, lobbyist, U.S. Tobacco, presented a legislative proposal to change the current law on the taxation method of moist snuff. Taxes on moist snuff are 25 percent of the wholesale price pursuant to the tobacco products tax, regardless of the amount of snuff in a container or the amount for which the container is actually sold at retail. The proposed legislation would restructure the tax as an excise tax based on weight. This would have an impact on other producers of snuff by raising the price of their product, but would have limited impact on U.S. Tobacco which sells approximately 80 percent of the moist snuff in New Mexico. The theory is that young children will purchase lower-priced products and to prevent this, the tax should be raised on those products.

Representative Varela suggested that all tobacco products need to be assessed for the amount and method of taxation on the product.

Speaker Lujan suggested that Mr. O'Neill and Mr. Larragoite are attempting to do away with pricing based on quality, and replace the tax with a "flat" tax based on the unit, in this case weight, of the product so that all products of similar weight would be taxed at the same rate. The quality of the product is actually a marketing approach to sell the product because there is no actual quality difference between the products. This was verified by Eric Donaldson from U.S. Tobacco, who stated: "A person who likes Skoal won't like Husky and a person who likes Husky won't like Skoal and probably someone who tries either one for the first time will throw up, but otherwise there is no difference in the products.".

The committee adjourned at 3:27 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 8

December 2006
Agenda
Minutes

Revised: December 1, 2006

TENTATIVE AGENDA
for the
SIXTH MEETING IN 2006
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

December 4-5, 2006
State Capitol, Room 322
Santa Fe, New Mexico

Monday, December 4

9:00 a.m.	**Call to Order — Approve Minutes of October 2-4, 2006 Meeting** —Representative Donald L. Whitaker, Chair
9:05 a.m.	**Tax Expenditure Budgets — Pros and Cons** —Dr. Tom Clifford, Chief Economist, Taxation and Revenue Department (TRD) —Jim Eads, Director, New Mexico Tax Research Institute
10:15 a.m.	**Regulatory Justice** —T.J. Trujillo, Attorney, Gallagher and Kennedy, PA, on Behalf of the Association of Commerce and Industry
11:15 a.m.	**Tax Increment Financing Update** —Mike Daly, CEO, Mesa del Sol
12:00 noon	**Lunch**
1:30 p.m.	**University of New Mexico Health Center Proposals** —Richard Minzner, Lobbyist
2:30 p.m.	**Gross Receipts Tax Deduction for Veterinary Supplies and Services** —Sharon Lombardi, Executive Director, Dairy Producers of New Mexico
3:15 p.m.	**Municipal Sports Authority Gross Receipts Tax** —Tom Horan, Lobbyist
4:00 p.m.	**Other TRD Concepts for 2007 Session Introduction** —Tom Clifford, Chief Economist, TRD —Patricia Herrera, TRD
4:45 p.m.	**Recess**

Tuesday, December 5

9:00 a.m.	**Reconvene** —Representative Donald L. Whitaker, Chair
9:05 a.m.	**Governor Richardson's 2007 Tax Proposals** —Jan Goodwin, Secretary of Taxation and Revenue
10:00 a.m.	**Legislative Endorsements** —Pam Ray, Staff Attorney, Legislative Council Service
12:30 p.m.	**Adjourn**

MINUTES
of the
SIXTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

December 4-5, 2006
State Capitol, Santa Fe, New Mexico

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Donald L. Whitaker, chair, at 9:00 a.m. at the State Capitol, Santa Fe.

Present
Rep. Donald L. Whitaker, Chair
Sen. John Arthur Smith, Vice Chair
Sen. Ben D. Altamirano
Rep. Janice E. Arnold-Jones
Sen. Mark Boitano
Rep. Anna M. Crook
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. Ben Lujan, Speaker of the House
Sen. William E. Sharer
Sen. James G. Taylor
Rep. Thomas C. Taylor

Absent
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Sen. Joseph A. Fidel
Rep. George J. Hanosh
Rep. Daniel P. Silva
Sen. H. Diane Snyder

Designees
Sen. Sue Wilson Beffort
Sen. Phil A. Griego
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Rep. Donald E. Bratton
Sen. John T.L. Grubesic
Rep. Irvin Harrison
Rep. Manuel G. Herrera
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Andy Nunez
Sen. Leonard Lee Rawson
Rep. Bill Rehm
Rep. Debbie A. Rodella
Sen. John C. Ryan
Sen. Bernadette M. Sanchez
Rep. Joe M Stell
Rep. Don L. Tripp

Staff
Tim Crawford, Legislative Council Service (LCS)
Cleo Griffith, LCS
Norton Francis, Legislative Finance Committee (LFC)
Pam Ray, LCS
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, December 4

Tax Expenditure Budgets — Pros and Cons

Dr. Tom Clifford, chief economist, Taxation and Revenue Department (TRD), and Jim Eads, executive director, New Mexico Tax Research Institute (TRI), discussed tax expenditure budgets with the committee.

Although conceptually a valuable tool in reviewing and preparing the state's budget, preparation of a tax expenditure budget presents numerous analytical and procedural challenges. These challenges fall into the following three broad categories.

1. Lack of clarity in defining what constitutes a tax expenditure.
   - The Congressional Budget and Impoundment Control Act of 1974 defines tax expenditures as "revenue losses attributable to provisions of the federal tax laws which allow a special exclusion, exemption or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability".
   - Defining the normal tax structure requires numerous judgments, many of them controversial. Some examples of the difficult issues raised by this process include:
     - Should the tax rate structure be progressive, proportional or regressive?
     - How should appropriate deductions be determined for such expenses as depreciation?
     - What method of accounting should be assumed to be normal?
     - How should operating losses be treated in a normal tax structure?
     - How should provisions be treated that provide less favorable treatment than normal tax law? Is there such a thing as a negative tax expenditure?

2. Lack of accurate information with which to calculate foregone revenue.
   - Since New Mexico "piggybacks" on the federal income tax system, the state has tax expenditures on items of tax preference incorporated in the federal tax code. Although the state does have access to most of the information reported by New Mexico taxpayers on their federal tax returns, there are numerous federal provisions on which no detailed reporting is available.
   - Taxpayers do not separately state the value for the different exemptions and deductions they claim under the reporting form for gross receipts, compensating and

withholding taxes. Thus, detailed information on most exemptions and deductions is not available. Estimates of the financial impacts of these provisions must be constructed from other information sources.

3. Lack of information and consensus on how to evaluate the effectiveness of tax expenditures.

- Many tax expenditures are designed to mitigate the effects of inequities in the distribution of income or other disadvantages such as physical disabilities. Determining whether the amount of a tax expenditure is sufficient to compensate a disadvantage would rely on subjective judgments that would be almost impossible to compare across individuals.
- Many tax expenditures are designed to alter economic behavior in cases where that behavior has effects on persons other than the actor (so-called "externalities"). Externalities can be positive, as in the case of a development that enhances the value of neighboring properties, or negative, as in the case of a polluting facility that reduces the value of neighboring properties. The problem is that economists have not established reliable estimates of the economic magnitude of most externalities.
- Many tax preferences are intended to increase economic activity in the state by encouraging workers or businesses to locate in the state or to remain here. Evaluating the effectiveness of these policies requires a detailed economic model that accurately captures the effects of tax policies on economic decisions.

Mr. Eads then continued with more information on tax expenditure budgets. A tax expenditure budget consists of an organized list of departures from the "normal" tax structure. The departures, which are designed to favor a particular industry, activity or class of persons, take different forms, such as deductions, deferrals, exclusions, credits or special rates. Basically, the tax expenditure budget is a document that is intended to be a useful source of information that will allow the legislative body to subject indirect "expenditures" of public resources to the same degree of scrutiny as direct expenditures of public funds. The major issue, of course, is the determination of the standard against which these expenditures are measured. The federal experience is not completely helpful insomuch as the federal tax expenditure document does not have to take into consideration the retail and excise taxes that often make up a majority of state revenue flows.

As of 2002, only seven states, Idaho, New York, Ohio, Oregon, Pennsylvania, Tennessee and Wisconsin, actually transmitted the tax expenditure report along with or as a part of the budget document. While the inclusion of the tax expenditure budget in the state budget is an indicator of its importance, its exclusion should be not be construed as a measure of its usefulness. It can be a useful tool in most cases. In all other states, the tax expenditure report was a separate report, even though it may have been a part of the budget debate.

It is obvious from the definition of a "tax expenditure budget" that the heart of the process is determining the norm from which the deviations or "expenditures" are measured. The states tend to use the following three different approaches.

- **Conceptual Baseline.** This is the approach used by the Joint Tax Committee in preparing its estimate of tax expenditures for the federal government. It identifies a benchmark "normal" tax base or "normal income tax law" and measures the deviations from that norm to determine the "expenditures" that exist in the tax law. This approach is said to be less constrained by existing law than the approaches noted below. Idaho, Minnesota and West Virginia are reported to be the states that use this approach.
- **Reference Law Baseline.** This approach measures deviations or "expenditures" based on existing exemptions or exclusions from the tax base, but some are considered "normal" and are part of the base and thus are not counted as "tax expenditures". The U.S. Treasury Department uses a form of this approach as does Connecticut.
- **Revenue Reducer List.** This approach identifies existing reducers of revenue through exemption, exclusion or deduction and quantifies the revenue loss without reference to a "normal" standard. Thus, the costs are identified without any attempt being made to reference them to some standard that may have shaped their enactment. At least one state tax policy organization, the Washington Research Council, has criticized this approach in its state as being a way of overturning what were decent policy decisions at the time of their enactment based on short-term revenue expediency.

In summary, tax expenditure budgets, tax expense reports, tax preference cost reports, or whatever you may call these documents, could be a useful tool to the New Mexico Legislature in determining the long-term impact of existing laws and proposed new laws on the fiscal well-being of the state. Such a report would certainly contribute to the transparency of government. On the other hand, such a list could become a shopping list for raising revenue under difficult conditions that might not allow for sufficient consideration of the underlying policy decisions that caused the "expenditure" to be enacted. A tax expenditure budget is much more than a quantitative analysis. It requires a significant, perhaps even monumental, qualitative examination at its creation that must be continuous if the process is to work properly. Knowledge and principles are the cornerstones of good public policy decisions and should always be at the disposal of policymakers for their wise and beneficial use.

Dynamic Revenue Estimating

Dr. Clifford spoke to the committee about the experience the state now has had with dynamic revenue estimating.

The term "dynamic revenue analysis" has varied meanings depending on the range and scope of the various effects of tax law changes that are being assumed or focused on by a policymaker or revenue estimator. At the one extreme, for example, the term is sometimes viewed relatively narrowly as including the revenue-related effects of only the direct behavioral changes that a tax change causes. At the other extreme, the term can refer to the entire range of revenue effects of a tax change, including the various macroeconomic effects on economic activity that tax changes can produce. Despite that variation in the term's day-to-day usage, tax economists generally subscribe to the latter view and formally define dynamic revenue analyses broadly.

Dynamic revenue analyses takes into account not only the direct behavioral responses that tax changes produce in taxpayers, but also the various indirect behavioral effects they produce in individuals and businesses as well as the induced macroeconomic feedback effects associated with all of the direct and indirect behavioral responses. Thus, for example, for an investment tax credit, a full dynamic analysis would take into account not only the credit's direct effects on the level and nature of investment expenditures, but also the resulting effects on output, productivity, incomes, consumer spending and employment throughout the economy, as well as the feedback effects of those changes on revenue.

The general findings from California's dynamic revenue analyses are as follows:

- the magnitude of effects, generally, as determined from the feedback revenue effects generated by California's model, while definitely present and identifiable, are relatively modest;
- the self-financing capability, as indicated by evidence from the California model, does not show that tax rate reductions generally can pay for themselves, as some parties have in the past claimed;
- specific feedback effects are shown to vary depending on the tax involved and specific tax law changes being considered;
- investment impacts appear to indicate that the long-term feedback effects for broad-based tax rate changes tend to be greatest for the corporate tax due to their effects on investment expenditures and productivity;
- leakage and migration are observed when the partially offsetting dynamic revenue effects from state personal income tax changes are influenced by both the deductibility of state income taxes on federal income tax returns and the high savings propensities of upper-income individuals. For example, some of the benefits to individuals from a state tax rate reduction will not enter the state's spending stream due to the resulting higher federal taxes and personal savings. However, the benefits to economic performance, such as job growth, still can be significant, partly due to the interstate population inflows that will be induced; and
- a model's results are very sensitive to the values used for many of the various elasticities contained in it, especially those regarding such things as population migration and trade flows. Because the true values of those elasticities are often not known with certainty, especially at the state level, educated guesses and assumptions about those values often must be made, and errors in those assumptions can significantly reduce the model's reliability.

Senator Beffort supports creation of a position at TRD to operate the REMI model.

Regulatory Justice

T.J. Trujillo, attorney, Gallagher and Kennedy, PA, spoke on behalf of the Association of Commerce and Industry (ACI) to familiarize the committee members with the concept of regulatory justice as viewed by ACI.

Mr. Trujillo summarized the present regulatory structures by stating that in New Mexico, there are approximately 36 executive departments and independent agencies, 208 boards and commissions and within the New Mexico Administrative Code (NMAC), 22 titles, 384 chapters, and thousands of rules and regulations under each chapter.

The major milestones for broad-based regulatory reform are as follows:

- 1946: federal government enacted the federal Administrative Procedures Act;
- 1957: NM enacted the Uniform Licensing Act;
- 1967: NM enacted the State Rules Act;
- 1969: NM enacted the Administrative Procedures Act;
- 1977: NM enacted the Executive Reorganization Act;
- 1993: NM enacted the Inspection of Public Records Act;
- 1997: NM enacted the Uniform Statute and Rule Construction Act; and
- 2005: NM enacted the Small Business Regulatory Relief Act.

The major problem is that the Administrative Procedures Act does not apply to most agencies, resulting in few uniform regulatory controls that apply to all state agencies. Further, agencies are allowed to establish their own administrative procedures without regard to cross-agency uniformity or consistency. The result is that the regulatory system is complex and not user-friendly. Regulatory reform in New Mexico has been incremental and only focused on particular agencies and topics. New Mexico needs to closely examine the overall procedural framework within which agencies operate; without necessary procedural controls, agencies may either intentionally or inadvertently use their delegated authority to undermine the true intent of the legislative or executive branches of government.

The following problems were identified:

1. a need for:

    - meaningful standards and limitations for rulemaking;
    - a central panel of independent hearing officers and administrative law judges;
    - a party to recover costs and attorney fees where an agency pursues an adjudicatory proceeding without merit;
    - agencies to periodically review all of their rules;
    - agencies to publish their regulatory agendas setting forth anticipated topics;
    - a comprehensive administrative mechanism for a person or business to raise concerns about unnecessary burdens placed on the regulated community, as well as unfair regulatory practices;
    - a continuing and formal process to identify and develop solutions to regulatory obstacles and problems; and
    - a formal process for agencies to report to legislative interim committees on the current status of affairs in the regulatory system; and

2. a lack of a generally applicable:
    - Administrative Procedures Act;
    - formal process for interested stakeholders to negotiate rules;
    - requirement for all agencies to follow when filing, publishing and distributing agency proceedings;
    - time frame for all agencies to follow when dealing with licenses and permits;

- set of uniform inspection procedures;
- standard for setting fees; and
- requirement to assess economic impacts when promulgating rules.

The current status of regulatory reform is summarized as follows:
- meetings are in progress with officials from Governor's Office;
- legislation is being drafted legislation to either combine some of the original draft bills or model them after uniform legislation;
- legislative sponsors are being identified to work with the Regulatory Justice Group;
- because participation in the regulatory system is a complicated phenomena, the long-term goal is to simplify the regulatory framework, better understand and shape the underlying procedural framework and balance agency discretion with consistency and accountability;
- continue to seek input from all stakeholders; and
- introduce viable legislation during the 2007 legislative session.

Senator Griego observed that public hearings are often scheduled at times that are inconvenient for the public.

Representative Taylor noted that the rulemaking process is arbitrary and makes no sense. He said that one person in the executive branch can thwart the legislative intent.

Representative Crook observed that she has received complaints from constituents regarding the complexity of rules.

Tax Increment Financing (TIF) Update

Mike Daly, CEO, Mesa del Sol, reported to the committee that to date Mesa del Sol has invested $40 million in water, sewer, gas, electric and real estate infrastructure. Mesa del Sol is seeking use of 75% of the gross receipts and property tax collections to finance additional infrastructure. Mr. Daly noted that Mesa del Sol has already attracted Advent Solar (150 employees) and Culver Studios (up to 4,000 employees). When fully built, Mesa del Sol is expected to provide 60,000 jobs.

Mr. Daly stated that "but for" Mesa del Sol's investment, the tax revenue would not be generated and presented the following revenue estimates.

Proposed Mesa Del Sol Tax Increment Financing (All Amounts Are 25-Year Totals Except Where Noted)	
Incremental new property and gross receipts tax	$747,500,000
Proposed amount of the incremental tax to finance Mesa Del Sol	(551,300,000)
Residual amount of new tax for state and local use	196,200,000

Estimated new personal income and gross receipts tax (multiplier effect)	88,000,000
Total new state and local tax over 25 years	480,400,000
Average annual revenue until bonds expire	19,216,000
Additional annual state and local revenue after bonds expire	27,900,000
Total average annual revenue after bonds expire	47,116,000

Senator Taylor asked what the state will lose in tax revenue if a TIF district is created. Mr. Daly stated that he will provide detailed estimates, by business, rather than the aggregates presented in the 25-year illustration.

Senator Taylor advised that Mesa del Sol needs to be a good neighbor to the surrounding communities.

Senator Beffort supports Mr. Daly's "but for" argument.

Senator Smith asked about approval from the City of Albuquerque. Mr. Daly said that Mesa del Sol is meeting with the city on December 4, 2006 and anticipates a vote later in the month.

University of New Mexico (UNM) Health Sciences Center Proposals

Richard Minzner, lobbyist for the UNM Health Sciences Center, presented information on potential legislation that the university plans to introduce in the 2007 session. The City of Rio Rancho is seeking legislative authority for a gross receipts tax (GRT) for the purpose of financing a UNM campus in Rio Rancho. Specifically, Rio Rancho wants authority for up to a .25% GRT in .06% increments to support 20-year GRT revenue bonds. The tax would be subject to a vote of the public.

Senator Taylor asked how the proposed UNM health facility fits into UNM's master plan. He is concerned about a proliferation of UNM campuses.

Representative Whitaker stated that a .25% GRT would raise the Rio Rancho GRT to one of the highest in the state. The current GRT rate in Rio Rancho is 6.6875%.

Speaker Lujan asked how much revenue would be derived from the GRT. A full .25% would generate approximately $3 million per year. The GRT would support between $25 million and $40 million in revenue bonds.

Representative Whitaker asked about the impact on the main UNM campus in Albuquerque. UNM views the Rio Rancho campus not as a branch campus, but as an extension of the main campus, and it will allow for an expansion of the student population.
Speaker Lujan noted that by authorizing the GRT, the legislature would be committing to finance the annual operating cost of the Rio Rancho campus.

Senator Smith noted that Rio Rancho has existing capacity in its GRT and suggested that Rio Rancho might use some of its economic development capacity to finance the UNM campus. He is concerned that the city is reaching the limit of the GRT rate and the base is continually shrinking.

GRT Deduction for Veterinary Supplies and Services

Sharon Lombardi, executive director, Dairy Producers of New Mexico, presented the group's desire to eliminate the GRT on veterinary services for dairy cattle.

Dairy farming has changed drastically over the past 20 to 30 years. At one time, there were over three million dairies in the U.S.; now, there are approximately 160,000 nationwide. The reasons are many for this decrease in number. Most dairies in New Mexico came from California, where farmers sold land due to encroachment. All the farmers knew was dairying, so they looked for a place where they could continue to dairy farm.

It is important to remember that dairy products are one of the most regulated foods in America. Burdening smaller dairy farms with excessive regulations is considered to be one of the causes of the change in dairy farming. Farmers have had to greatly expand operations in order to survive the extra cost of production and regulations. Dairy farmers have always worked hard to implement a wide range of measures to keep their animals and the milk supply safe, including standard herd health and bio-security procedures, including meticulous record keeping on the health of each cow, routine medical checks by veterinarians and training employees to closely monitor animals and milking facilities.

Since mid-2004, New Mexico dairy farmers' milk prices have hovered around the break-even mark while the 2006 prices have been about $2.00 to $3.00 per 100 weight below the cost of production. The increase in feed prices, as well as higher utility and gasoline prices, has put a burden on New Mexico dairy farms. In order to maintain a healthy and sustainable dairy industry in New Mexico, groups are trying to find ways to help its bottom line. Since animal health is very important to dairy farmers as well as consumers, the legislature is being asked to look at a GRT deduction for veterinary medical services, medicine or medical supplies for livestock and to join the majority of other states that now have this in place.

Senator Smith would like a fiscal impact report from TRD before moving to support the proposed GRT deduction. He noted that he might be supportive of a deduction if there is a milk sale price threshold in the legislation.

Senator Beffort asked where New Mexico's ranks in cheese production. Ms. Lombardi stated that New Mexico is currently eighth in the nation. Senator Beffort would support a deduction for veterinary services because New Mexico is competing with other states that do not tax veterinary services.

Representative Crook noted that dairy farmers close to the Texas border travel to Texas for veterinary supplies to avoid the New Mexico GRT.

Senator Taylor noted that agriculture ranks high in New Mexico's economy.

Senator Smith noted that the deduction in the draft bill is a broader than just for dairy cows; it would include horses and any animal that meets the definition of "livestock". The scope of the bill will be reduced to be as narrow as possible, but Ms. Lombardi was uncertain if a differentiation could be made between beef cattle and dairy cattle.

Municipal Sports Authority GRT

The Regional Sports Authority Act was presented by Tom Horan, lobbyist, City of Albuquerque. The bill establishes the municipal and county regional sports authority GRT, and authorizes the creation of and provides powers to regional sports authorities.

The purpose of regional sports authorities, comprised of two or more governmental units, would be to plan for and create athletic and recreational services for the citizens of the authority; to plan, construct, operate and maintain athletic and recreational facilities; and to enter into agreements with other political subdivisions, public schools and universities to allow residents of other political entities to use the facilities of the authority.

Each county or municipality that is a member of a regional sports authority will have to enact a municipal regional sports authority GRT or county regional sports authority GRT. The local option would be imposed in increments of one-sixteenth percent, but not to exceed one-fourth percent, and is to be used for the management, construction or operation of a regional sports authority or for specific public athletic or recreational projects or services of the authority.

The tax must be approved by a majority of the voters.

The local regional sports authority GRT would be eligible for the hold harmless distribution placed on food and medical deductions. The TRD will also receive an administrative fee from the local regional sports authority GRT.

Public hearings and display of public notices would be made before the regional sports authority would be created. The governor would also have to approve the regional sports authority. The bill also outlines the powers and duties of the board for each authority. An authority would be able to sue and be sued, enter into contracts and agreements, set fees for the authority's facilities, pledge revenues to the payment of bonds, acquire personal property and rights of way, accept property and gifts, and provide services outside the boundaries of the authority. It allows the authority to issue revenue bonds, with the proceeds used to finance the purchase, construction, renovation, equipping or furnishing of a sports authority project. The property and income of the sports authorities and income from their bonds would not be subject to state taxes. Representative Arnold-Jones is concerned about the composition of the proposed board of a regional sports authority. She does not believe that there is a provision for public redresses. Senator Taylor noted that most municipalities already finance such projects as parks with existing GRT. He is skeptical about authorizing the creation of a new government entity and another GRT. He noted that Albuquerque should be engaging in the activities proposed in the legislation with existing resources.

Other TRD Concepts for 2007 Session Introduction

Patricia Herrera and Phillip Salazar, TRD, began the presentation of TRD proposals that are not yet drafted in their final form and will most likely be introduced in the 2007 legislative session.

1. Proposed legislative concept regarding licensee tax compliance.

Intent: Propose legislation to ensure that licensing agencies are informed of tax reporting and payment failures that would lead to denial, suspension or revocation of a license issued once the TRD has a "settled tax liability" due on the taxpayer-licensee's income tax return or other state or local tax return for which the licensee is responsible, or deemed responsible, for paying. The bill also amends Section 7-1-8 NMSA 1978, which requires confidentiality of information submitted in tax returns, to allow for reporting of appropriate tax information to licensing agencies.

Representative Arnold-Jones asked if the proposed concept would apply to lawyers and physicians. Mr. Salazar stated that it would not apply to lawyers because lawyers are not licensed by the Regulation and Licensing Department (RLD).

Representative Arnold-Jones noted that not all licensees are licensed by RLD. She believes that if tax compliance is going to be used to determine eligibility for licensure, all persons should be subject to the same rules, not just those licensed by RLD.

Senator Smith asked how TRD seeks to settle delinquent taxes. Mr. Salazar noted that

TRD enters into payment plans and a delinquent taxpayer that enters into a plan would not be reported to RLD.

Senator Smith feels that the proposed concept is very broad and could result in a taxpayer being denied the ability to do business, therefore threatening the taxpayer's livelihood.

2. Ken Ortiz, director, Motor Vehicle Division (MVD), identified the following Motor Vehicle Code (Code) deficiencies that act as major obstacles to improving the MVD's service to the public:

- language in the Code is obsolete and unclear;
- code definitions are inadequate or inconsistent with applicable federal definitions;
- the fee structure in the Code is confusing to both employees and customers;
- the Code is inconsistent with some federal requirements;
- the Code contains a number of internal conflicts and inconsistencies;
- the Code provisions do not sufficiently prevent and control fraud; and
- the Code does not meet the current business needs of MVD or its customers.

Senator Beffort inquired about the potential loss of federal funds. Mr. Ortiz explained that federal law requires that all motor vehicle citations pertaining to the holder of a commercial driver license (CDL) must be posted on the license. New Mexico law is in conflict because CDL holders referred to a diversion program by a judge do not have the citation shown on their license, i.e., their citation is "masked". The federal government has informed states that it intends to sanction states that are not in compliance.

<u>Tuesday, December 5</u>

Governor Richardson's 2007 Tax Proposals

Jan Goodwin, secretary of taxation and revenue, outlined the following governor's tax proposals.

Working Families Tax Credit

A new refundable tax credit would be created in the amount of 10% of the federal earned income tax credit (EITC) for which a taxpayer is eligible. Taxpayers eligible for the Low Income Comprehensive Tax Rebate (LICTR) would be able to claim the greater of the amount they would receive under the LICTR program or the new working families tax credit amounts. Benefits from the new credit would increase with earned income up to a maximum and then decrease, as illustrated in the following figure.

Reduce Gross Receipts Tax Pyramiding

A new tax credit is created for a portion of the GRT on services purchased by New Mexico businesses that have less than $300,000 of gross receipts. Certain services are excluded from eligibility, including commercial linen, entertainment or recreation, intrastate telephone and telegraph, janitorial or cleaning, landscaping, repair and maintenance, construction, sewer and solid waste disposal, research and development and services whose price is eligible for any other New Mexico tax credit. The credit rate is set at 3.775% if the service was purchased within the boundaries of a municipality and 5.0% if purchased within an unincorporated area of a county.

Fiscal impacts: The proposal would take effect January 1, 2008, so the fiscal impacts would be $1.5 million in FY 2008, rising to $3.3 million per year beginning in FY 2009. Impacts were estimated using information from GRT returns and also from input-output estimates for each industry.

GRT Deduction for Hospitals

Under present law, hospitals are allowed a deduction for 50% of their gross receipts (Section 7-9-73.1 NMSA 1978). The proposal would increase that deduction to 100%. The deduction would be phased in over a three-year period, so that 67% of receipts would be deductible in FY 2008, 83% would be deductible in FY 2009 and 100% in FY 2010 and thereafter.

General fund fiscal impacts are estimated at $4.0 million in FY 2008 increasing to $13.2 million in FY 2010. Local government revenues would decrease by $2.7 million in FY 2008 and increase to $8.7 million in FY 2010.

GRT Deduction for Mutual Fund Advisory Services

A new gross receipts tax deduction would be created for the fees for performing management or investment advisory services. The new deduction would apply to services provided to a mutual fund, hedge fund or real estate investment trust.

General fund impacts are estimated at $100,000 per year beginning in FY 2008.

Angel Investment Tax Credit

A personal income tax credit would be allowed for 25% of qualifying investments in high-technology or manufacturing businesses. Investors would be allowed a maximum credit of $25,000 per investment, and a total of three qualified investments per year or $75,000 in credits. Credits in excess of liability could be carried forward for three years. An overall cap of $750,000 per year would be imposed on all credits claimed. Amounts in excess of the cap could be used in future years.

General fund fiscal impacts are estimated to be about $750,000 per year.

Extend $2,500 Personal Exemption to Households Making up to $40,000 (Single) and $60,000 (Married Joint)

This proposal extends the new personal exemption that just took effect this year (2006). Currently, this phases out and is not available to taxpayers making more than $27,000 (single) and $41,000 (married joint).

The fiscal impacts to the general fund are estimated to be $20 million per year. The additional tax benefits would accrue to 110,000 taxpayers, for average benefits of $180 per return.

Income Tax Exclusion of New Mexicans on Active Duty in the U.S. Armed Services

Salaries paid by the federal government to New Mexico taxpayers serving on active duty in the U.S. armed services would be exempt from state income tax.

The fiscal impacts to the general fund are estimated to be $9.4 million, which would be in the form of benefits received by 7,000 taxpayers for an average benefit of $1,340 per return.

Exclusion for 50% of Earned Income of Military Retirees

Military retirees would be allowed to deduct 50% of their earned income up to $50,000 for purposes of the income tax. Earned income would be defined to include wages and salaries, and proprietor's income from operation of a business or farm. Earned income would not include dividend and interest income or capital gains from ownership interests in any business.

The fiscal impact to the general fund would be $8.4 million per year as benefits that would flow to 12,000 retirees, an average benefit of $700 per return.

Expand Renewable Energy Production Tax Credits

The definition of "biomass" for purposes of the renewable energy production tax credit would be expanded to include all organic material available on a renewable basis.

The fiscal impact to the general fund is estimated to be $0.3 million per year.

Advanced Energy Products Manufacturers Credit

A new income tax credit would be provided for up to 5% of a taxpayer's spending on manufacturing equipment used in producing "advanced energy products". To be eligible to claim a credit, the taxpayer would employ at least one new full-time employee for every $500,000 of expenditures up to $30 million, and at least one new full-time employee for every $1 million of expenditures over $30 million. Advanced energy products are defined as vehicles powered by advanced energy sources, fuel cell systems, renewable energy systems and any components of these as well as components of integrated gasification combined cycle coal facilities and facilities that sequester carbon from integrated gasification combined cycle coal plants.

The fiscal impact to the general fund is estimated at $0.2 million per year in FY 2008 with potential for increases in the future.

Tax Credit for Energy-Efficient Heating and Cooling

Nonrefundable income tax credits would be allowed for the purchase of certain energy-efficient home heating and cooling appliances. Qualified appliances would be those eligible for federal income tax credits. State credits would be equivalent to one-half of the federal credit amounts. Total credits claimed by one taxpayer in all years would be limited to $250.

The fiscal impact from prorating estimates of the cost of the federal program appears to be about $700,000 per year for the cost of the program.

Oil and Gas Conservation Tax for Land Conservation

Distributions of the net revenue attributable to the Oil and Gas Conservation Tax Act are modified to direct one-half of the revenue to a new Conservation and Clean Energy Bonding Fund created as a special fund within the New Mexico Finance Authority (NMFA). Money in the fund is appropriated to the NMFA for debt service on bonds issued pursuant to the act.

The fiscal impact would be from shifting $10.5 million from the general fund to the new fund beginning in FY 2008.

GRT Holiday for Energy Star Appliances

A one-month GRT "holiday" would be created for purchases of appliances that meet the EPA's criteria for energy star appliances.

The fiscal impacts to general fund revenue would be a decrease of $500,000 per year. Local government revenues would decrease by another $300,000.

Increase Renewable Energy Production Tax Credit

The rate of the renewable energy tax credit for electricity produced using solar energy — currently $0.01 per kilowatt hour for the first 400,000 megawatt hours — would be increased to $0.02 per kilowatt hour for the first 200,000 megawatt hours of energy produced. The minimum size of an eligible facility for the credit would be reduced from 10 megawatts to one megawatt.

The fiscal impacts to the general fund are less than $50,000 per year for the next few years due to low levels of qualified activity in the state.

Tax Credit for Energy Conservation Expenses

Nonrefundable — but transferable — tax credits would be provided for owners of properties meeting "green building" criteria. Credits would be based on a sliding scale depending on the level of energy conservation achieved. The credit rates would be designed to offset approximately 35% of the added cost of meeting the green building standards. The program would be modeled closely after Oregon's sustainable building program.

- Tax credits would be allowed in dollars per square foot of eligible facility construction or renovation. The amount of credit per square foot would be adjusted according to the environmental standards met by the project.
- The total credit awarded to a project could be claimed over a four-year period, i.e. 25% per year.
- Credit amounts for commercial buildings would be calculated according to the rating achieved by the project using codes from the U.S. Green Building Council's LEED rating system.
- Residential property owners would have a choice of basing their certified costs on the build green NM gold certification (developed by the Central New Mexico Homebuilders' Association) or the U.S. Green Building Council's rating.
- Credits for manufactured housing would be $5.00 per square foot. In order to be eligible, the manufactured housing must be EPA energy-star rated.

The fiscal impacts would start small (less than $500,000 in FY 2008) but would increase over time. Impacts over time depend on two provisions of the proposal. If credit claims are spread over four years and the credit is transferable but not refundable, impacts are estimated to reach about $1 million per year by FY 2011. If 100% of the credits can be claimed immediately and the credit is made refundable, impacts are estimated to reach $5 million per year by 2011.

Tax Credit for Parents Who Adopt Special Needs Children

Under current law, parents adopting special needs children receive a tax benefit limited to a $2,500 exemption per special needs child adopted. This translates into about $80.00 per year in tax savings. The proposal would increase benefits significantly by converting the exemption to a refundable tax credit of $1,000 per special needs child. In addition, the credit would not be limited to care of children under 18 but would be available as long as the child qualifies as a dependent for federal tax purposes. Three hundred fifty households with 600 special needs children would receive benefits of $600,000 per year for average benefits of $1,700 per household.

The fiscal impacts to the general fund revenue would be decreased by $540,000 per year.

Senator Smith asked how many firms would be eligible for the GRT deduction for mutual fund advisory services. Ms. Goodwin said that four or five companies would qualify.

Senator Smith would favor a sunset on several of the tax cut proposals in order to evaluate the actual costs.

Representative Varela asked about the governor's position on the minimum wage. Ms. Goodwin responded that she is not familiar with the governor's intention with respect to the minimum wage.

Representative Varela asked about the total cost to the general fund of all the governor's proposals. Ms. Goodwin said that the total is $82 million.

Representative Varela asked about the incremental cost of the final phase of the personal income tax cut. Dr. Clifford stated that the reduction in the highest marginal rate from 5.3% to 4.9% will cost approximately $64 million.

Representative Varela asked about the cost of LICTR. Ms. Goodwin responded that the approximate annual cost is between $25 million and $30 million.

Senator Beffort would favor legislation that provides a tax incentive for installing drip irrigation on New Mexico farms. Ms. Goodwin said she would convey the message to the governor.

Senator Sharer asked why the governor is proposing a tax deduction for earned income for military retirees. Ms. Goodwin stated that the intention is to attract and retain military retirees as New Mexico residents.

Representative Arnold-Jones believes that the governor is proposing tax benefits only for out-of-state businesses. Ms. Goodwin responded that several of the proposals will benefit existing in-state businesses.

Legislative Endorsements

Pam Ray and Cleo Griffith presented drafts of bills for the committee to consider for endorsement. The promoter of each bill was asked to give a very brief explanation of the bill. Most bills had been presented to the committee during prior committee meetings and those that were not were sent to the committee members for review prior to the meeting. Thirty-four bills were presented to the committee. Three of those bills were withdrawn from consideration. Thirty-one bills were considered for endorsement, 22 were endorsed.

The following is a summary of the committee's position on each bill presented:

DRAFT NO.	TITLE	AGENCY	202#	ENDORSED	SPONSORS
1.	Tech Corrections	TRD	.163160.2	Y #1	Sen. Taylor
2.	Audit Provisions	TRD	.163163.4	Y #2	Sen. Beffort
3.	CDL Changes	TRD/MVD	.163164.3	Y #3	Sen. Taylor
4.	E-filing of Tax Returns	TRD	.163248.3	Y #4	Sen. Taylor Rep. A-J
5.	Oil and Gas-Non-Hydrocarbon Returns	TRD	.163250.4	Y #5	Sen. Taylor
6.	Gasoline and Special Fuels Bond & Deduction Clarification	TRD	.163391.2	Y #6	Sen. Taylor
7.	NAFTA-Truck Fleet Provisions	TRD	.163416.3	Y #7	Sen. Taylor
8.	Shared Agency Information Reports	TRD	.164207.2	Y #8	Sen. Taylor

12.	Local DWI Grant Fund - Increase Distribution of Liquor Excise Tax	NM Assoc. of Counties	.163264.1	Y #9	Rep. Gonzales
13.	Investment of Public Funds- Participation in Gov. Investment Fund	State Treasurer's Office	.164421.1	Y #10	Sen. Altamirano Rep. Varela (Also endorsed by IPOC)
14.	Reversion to State Aviation Fund	NMML	.164092.1	Y #11	Sen. Altamirano Speaker Lujan
16.	Local Option Comp. Tax	NMML	.164094.1	Y #12	Sen. Smith Rep. Gonzales
21.	Drug Testing and Reporting for Motor Carriers	NM Trucking Assoc.	.163469	Y #13	Rep. Gardner
22.	Voiding Indemnity Agreements	NM Trucking Assoc.	.163496	Y #14	Rep. Silva
23.	Failure to Use Seat Belt As Negligence	NM Trucking Assoc.	.163497.1	Y #15	Rep. Gardner
26.	Repeal Coal Surtax	BHP	.163535.3	Y #16	Sen. Altamirano
27.	Economic Obsolescence Oil & Gas Prop.	NMOGA	.164087.2	Y #17	Rep. Gonzales Sen. Taylor

28.	Economic Obsolescence Elec. Utility Property	PNM	.164091.2	Y #18	Rep. Silva
30.	Phased-In GRT Deduction for Private Hospitals	NM Hospital Assoc.	.164095.1	Y #19	Rep. Varela Sen. Smith
32.	Comp. Tax Cr. Navajo Coal-Fired E. Gen. Plant	Sithe-Global /Navajo Nation	.163549.1	Y #20	Rep. Taylor
33.	Rural Job Tax Credit	Rep. A-J	.164210.1	Y #21	Rep. A-J Sen. Cisneros
34.	Soil and Water Conservation Districts-Remove Sunset on Tax Levies	New Mexico Association of Soil and Water Conservation Districts	.164226.1	Y #22	Rep. Crook Sen. Taylor

The drafts that were not endorsed are in the following table.

DRAFT NO.	TITLE	AGENCY	202#
9.	Horse Racing Act	SRC/GCB	.163683.1
10.	GRT Deduction on Hearing and Vision Aids	Commn on the Deaf & Hard-of-Hearing - Rep. Silva	.163211.2
11.	GRT Deduction for Veterinarian Services and Supplies for Dairy Cattle	NM Dairy Producers	.163211.2
15.	Muni & Co Access to GRT Info	NMML	.164093.1

17.	Distribute Income Tax to Municipalities	NMML	.164097.1
19.	GRT for UNM Rio Rancho Campus	UNM	.163356.1
24.	Sports Authorities	City of Abq.	.163606.1
25.	Moist Snuff Tax Amendment	US Tobacco	.164127.1
29.	Surface Owner Protection Act	NMOGA/NM Cattlegrowers	.163394.1 .163342.2

The committee adjourned at 1:30 p.m.

REVENUE STABILIZATION AND
TAX POLICY COMMITTEE

Section 9

Legislation Reviewed
and
Committee Endorsements

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE PROPOSALS
DECEMBER 4 - 5, 2006

Draft Number	Title	Agency	202 #	Y	N	Y/N Endorsed	Sponsor
1	**Technical Corrections**	**TRD**	.163160.2	17	0	Y #1	Sen. J. Taylor
2	**Audit Provisions**	**TRD**	.163163.4	17	0	Y #2	Sen. Beffort
3	**CDL Changes**	**TRD**	.163164.3	17	0	Y #3	Sen. James Taylor
4	**Processing Provisions E-Filing of Tax Returns**	**TRD**	.163248.3	13	3	Y #4	Sen J. Taylor Rep. Arnold-Jones
5	**Oil & Gas - Nonhydrocarbon Returns**	**TRD**	.163250.4	15	0	Y #5	Sen. J. Taylor
6	**Gasoline and Special Fuels Out-of-State Distributor Deduction**	**TRD**	.163391.2	15	0	Y #6	Sen. J. Taylor
7	**NAFTA - Truck Fleet Provisions**	**TRD**	.163416.3	14	0	Y #7	Sen. J. Taylor

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE PROPOSALS
DECEMBER 4 - 5, 2006

Draft Number	Title	Agency	202 #	Y	N	Y/N Endorsed	Sponsor
8	**Tri-Agency Employee Information Reports**	**TRD**	.164207.2	11	4	Y #8	Sen. J. Taylor
9	**Horse Racing Act**	**SRC-GCB**	.163683.1	1	12	N	Speaker
10	**Gross Receipts Deduction on Hearing and Vision Aids**	**Cmmn D&HoHP Silva Cmmn D&HoHP Rep. Silva**	.163211.2	0	15	N	Rep. Silva
11	**GRT Deduction for Veterinary Supplies**	**NM Dairy Producers**	.163725.1	0	15	N	
12	**Local DWI Grant Fund Raise Distribution of Liquor Tax**	**NM Assoc of Counties**	.163264.1	14	1	Y #9	Rep. Gonzales
13	**Investment of Public Funds; Participating Gov. Investment Fund**	**State Treasurer's Office**	.164421.1	13	0	Y #10	Sen. Altamirano Rep. Varela (Also endorsed by IPOC)

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE PROPOSALS
DECEMBER 4 - 5, 2006

Draft Number	Title	Agency	202 #	Y	N	Y/N Endorsed	Spnsr
14	**Reversion to State Aviation Fund**	**NMML**	.164092.1	13	0	Y #11	Sen. Altamirano Speaker
15	**Municipal and County Access to GR Information**	**NMML**	.164093.1	**2**	**13**	N	
16	**Local Option Comp Tax**	**NMML**	.164094.1	15	1	Y #12	Sen. Smith Rep. Gonzales
17	**Distribute Income Tax to Municipalities**	**NMML**	.164097.1	0	14	N	
18 Not Considered	**County Mill Levy Require Commission to Submit if Approved**	**UNM**	.163289.1			N	
19	**GRT for UNM Rio Rancho Campus**	**UNM**	.163356.1	2	13	N	
20 Not Considered	**Local Hospital GRT Increments - Remove Sunset**	**UNM**	.163360.1			N	

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE PROPOSALS
DECEMBER 4 - 5, 2006

Draft Number	Title	Agency	202 #	Y	N	Y/N Endorsed	Sponsor
21	**Drug Testing and Report for Motor Carriers**	**NM Trucking Assoc.**	.163495.1	17	0	Y #13	Rep. Gardner
22	**Voiding Indemnity Agreements**	**NM Trucking Assoc.**	.163496.1	16	0	Y #14	Rep. Silva
23	**Failure to Use Seat Belts as Negligence**	**NM Trucking Assoc.**	.163497.1	11	4	Y #15	Rep. Gardner
24	**Sports Authority**	**City of ABQ**	.163606.1	2	14	N	
25	**Moist Snuff Excise Tax Amend**	**U.S. Tobacco**	.164127.1	0	16	N	
26	**Repeal Coal Surtax**	**BHP**	.163535.3	16	0	Y #16	Sen. Altamirano

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE PROPOSALS
DECEMBER 4 - 5, 2006

Draft Number	Title	Agency	202 #	Y	N	Y/N Endorsed	Sponsor
27	**Economic Obsolescence of Oil and Gas Property**	**NMOGA**	.164087.2	16	0	Y #17	Rep. Gonzales Sen. J. Taylor
28	**Economic Obsolescence of Utilities**	**PNM**	.164091.1	17	0	Y #18	Rep. Silva
29	**Surface Owner Protection Act**	**NMOGA Cattle Growers**	.163394.1 .163342.2	0	15	N	
30	**Phased-In GRT for Private Hospitals**	**NM Hospital Assoc.**	.164095.1	17	0	Y #19	Sen. Smith Rep. Varela
31 Not Considered	**Local Option GRT for Senior Citizen Programs**	**Sen. Smith**	.163880.1				
32	**Comp Tax Credit - Navajo Coal-Fired Generating Plant**	**Sithe-Global Navajo Nation**	.163549.1	17	0	Y #20	Rep. T. Taylor

REVENUE STABILIZATION AND TAX POLICY COMMITTEE
LEGISLATIVE PROPOSALS
DECEMBER 4 - 5, 2006

33	**Rural Job Tax Credit**	**Rep. Arnold-Jones**	.164210 .1	14	0	Y #21	Rep. Arnold-Jones Sen. Cisneros
Draft Number	**Title**	**Agency**	**202 #**	**Y**	**N**	**Y/N Endorsed**	**Sponsor**
34	**Soil and Water Conservation Districts - Remove Levy Sunset**	**New Mexico Assoc. of Soil and Water Conservation**	.164226.1	16	0	Y #22	Rep. Crook Sen. J. Taylor